

HIGH COURT OF ORISSA: CUTTACK

CRIMINAL APPEAL No.58 of 1996

From the judgment and order dated 14.02.1996 passed by Shri P.K.Panda, Assistant Sessions Judge, Chhatrapur in S.C. Case No.68-280 of 1994.

Arjuna Sahu and two others	Appellants
-versus-	
State of Orissa	Respondent

For Appellants : M/s. D.P. Dhal,
Mr. A.K. Acharya &
Mr. S.K. Nayak (B), Advocates

For Respondent : Addl. Govt. Advocate

A.F.R.

P R E S E N T:

THE HON'BLE MR. JUSTICE B.K.MISRA

Date of Judgment: 18.05.2011

B.K.Misra, J.

The three appellants being aggrieved with the order of conviction and sentences imposed on them by the learned Assistant Sessions Judge, Chhatrapur in S.T. Case No. 68-280 of 1994 have preferred this appeal. The learned Assistant Sessions Judge, Chhatrapur convicted the appellants under Section 304(B) of the Indian Penal Code (in short "I.P.C.") and sentenced each of them to undergo rigorous imprisonment for ten years and to pay a fine of Rs.500/- in default to further undergo rigorous imprisonment for three months and besides that the appellants were also convicted under Section 498(A) of the I.P.C. and sentenced to undergo rigorous

imprisonment for one year and to pay a fine of Rs.500/- each in default to undergo rigorous imprisonment for three months. Similarly each of the appellants were convicted under Section 4 of the Dowry Prohibition Act (in short 'D.P. Act') and sentenced to undergo rigorous imprisonment for six months.

2. The case of the prosecution is that the deceased Nini Sahu, who is the sister of the informant Ganesh Chandra Sahu (P.W.1) was given in marriage to appellant No.3-Kabiraj Sahu two years prior to the death of the deceased and a daughter was borne out of their wedlock. Thereafter, the deceased Nini again conceived and at the time of occurrence she was carrying three months. It is alleged that the deceased was subjected to torture by the appellants as well as three brother-in-laws of the deceased on demand of dowry. It is further alleged on 17.07.1993 around 6 'O' clock in the morning the appellant Kabiraj Sahu came to the house of P.W.1 in village Pratapur and informed P.W.1 that Nini was missing from the house from 4 'O' clock in the night of 17.7.1993 and has proceeded somewhere along with her daughter. On getting this information P.W.1 proceeded to the house of his relations in search of Nini, but could not get any information about her. On the evening of 19.7.1993, P.W.1, when was at Purusottampur got information that Nini has been murdered by her in-laws and her dead body has been thrown in the river Rushikulya. The dead body of Nini was recovered from the Rushikulya river near village Jalasarakhandi, but there was no trace of her daughter. About

the incident information was lodged by P.W.1 before the O.I.C., Purusottampur Police Station in writing vide Ext.1 and on receipt of such information Purusottampur P.S. Case No. 138 (A) of 1993 was registered under Sections 498 (A), 304 (B), 201, I.P.C. read with Section 34 of the I.P.C. as well as under Section 4 of the D.P. Act. Investigation was taken up and on completion of investigation, charge sheet was placed against the three appellants, namely, Kabiraj Sahu, Arjuna Sahu and Sundari Sahu and also against Abhimanyu Sahu and Kishore Kumar Sahu, who are the two sons of the appellant Arjuna Sahu. I may mention here that the learned Assistant Sessions Judge after taking evidence since did not find any incriminating evidence against accused Abhimanyu Sahu and Kishore Kumar Sahu, acquitted them of the charges under Section 498 (A), 304 (B) and under Section 4 of the D.P. Act. But since culpability of the appellants could be established by the prosecution, they were convicted under the aforementioned provisions of law._

3. The plea of the appellants was of complete denial of the allegations and it is their plea that there was high flood and the deceased along with her daughter might have been swept away in the river because of the high flood. The plea of accused appellant Kabiraj Sahu is that the deceased used to go to river with her baby to take bath and at the time of the incident the river was in spate over flowing the flanks and the deceased might have been swept away and when there was delay in her return, they searched for her.

4. The prosecution in order to establish its case had examined as many as twelve witnesses in all and of them P.W.1 is the informant, who is brother of the deceased, P.Ws. 2 and 3 are the parents of the deceased, P.Ws. 4 and 5 are the family members of P.Ws.1, 2 and 3. P.W.6 is an independent witness for the prosecution. P.Ws. 7 and 8 are two Police Constables, P.W.9 is the doctor, who conducted post mortem over the dead body of the deceased, P.Ws. 10 and 11 are the two Investigating Police Officers and P.W.12 is a seizure witness.

The appellants declined to examine any witness in their defence.

5. The learned Assistant Sessions Judge formulated the following points for determination, namely :-

1. (i) Whether the death of a woman occurred otherwise than under normal circumstances within 7 years of her marriage; and

ii) That soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband; and

iii) That the said cruelty or harassment was for or in connection with any demand for dowry;

2. Whether the accused persons being husband and relative of the husband of the deceased subjected her to cruelty;

a) by any wilful conduct of such nature as is likely to drive the woman to commit suicide or;

b) by harassment of the woman with a view to coercing her or any person related to her to meet any unlawful demand or any property or valuable security or on account of failure by her or any person related to her to meet such demand.

3. Whether the accused persons made demand, directly or indirectly from the parents or guardians of the bride, any dowry at or before or any time after the marriage, in connection with the marriage of the parties.

6. As I have already mentioned above though five accused persons faced trial but because of lack of evidence accused persons, namely, Abhimanyu Sahu and Kishore Kumar Sahu, who are the two brother-in-laws of the deceased and sons of the appellant-Arjuna and Sundari have been acquitted of the charges. But the present three appellant have been convicted as the learned trial court found sufficient materials against them.

7. Learned counsel for the appellants challenged the order of conviction and sentences imposed on the three appellants on the ground that the evidence on record should not have been relied upon by the learned Assistant Sessions Judge, as there are material contradictions in the evidence of P.Ws. 1 to 3 and the learned Assistant Sessions Judge misdirected himself in appreciating the evidence. It was also contended that there has been gross miscarriage of justice as the learned Assistant Sessions Judge convicted the appellants on mere surmises and conjectures. By taking me through

the evidence on record the learned counsel appearing for the appellants very strenuously urged that the evidence do not at all inspire confidence and therefore the order of conviction and sentences awarded to the appellants be set aside and the appellants be acquitted.

8. Learned Addl. Government Advocate appearing for the State on the other hand supported the order of conviction and sentences imposed on the appellants and contended that the order of conviction and sentences need not be disturbed and interfered with as such conviction has been based upon clinching evidence on record.

9. In the instant case all the three appellants have been convicted under Sections 498(A), 304(B) of the I.P.C. as well as under Section 4 of the D.P.Act.

10. For making out an offence of dowry death under Section 304(B) of the I.P.C. it is incumbent upon the prosecution to prove the following ingredients.

i) The death of a woman is caused by any burns or bodily injury or her death must have occurred otherwise than under normal circumstances.

ii) Such death must have occurred within seven years of her marriage.

iii) Soon before her death she must have been subjected to cruelty or harassment by her husband or any relative of her husband and

iv) Such cruelty or harassment must be in connection with the demand of dowry.

11. While dealing with Section 304 (B) of the I.P.C., the Apex Court in the case of **Kamesh Panjiyar @ Kamlesh Panjiyar v. State of Bihar** (2005) 2 SCC 388 held as under:-

“14. The word “dowry” in Section 304-B IPC has to be understood as it is defined in Section 2 of the Dowry Act. Thus, there are three occasions related to dowry. One is before the marriage, second is at the time of marriage and the third “at any time” after the marriage. The third occasion may appear to be unending period. But the crucial words are “in connection with the marriage of the said parties”. As was observed in the said case “suicidal death” of a married woman within seven years of her marriage is covered by the expression “death of a woman is caused or occurs otherwise than under normal circumstances” as expressed in Section 304-B IPC.”

12. In the backdrop of the above legal position and the ratio propounded by the Apex Court in a very recent judgment in the case of **Bachni Devi & Anr. V. State of Hariyana through Secretary Home Department** (2011) 48 OCR (SC) 871 now let us proceed to examine the case of the prosecution and the evidence on record to determine as to how far the prosecution has been able to establish its case against the appellants.

13. In the instant case, it is an admitted fact that on 18.02.1991 the appellant Kabiraj Sahu, who is the son of appellants Arjuna Sahu and Sundari Sahu married the deceased Nini Sahu, who is the daughter of P.Ws. 2 and 3. The factum of marriage has been admitted to by the appellants during their examination under Section 313 of the Cr. P.C. It is also further an admitted fact that the dead body of the deceased Nini was found floating in the waters of river Rushikulya near the village Jalasarakhandi 'Tothha' (ghat).

Inquest over the dead body of the deceased Nini was held on 20.07.1993 by Police and there after the dead body was sent for post mortem examination to the Department of Forensic Medicine and Toxicology of M.K.C.G. Medical College, Berhampur. Professor Dr. Hemanta Kumar Sahoo (P.W.9) held autopsy over the dead body of the deceased being assisted by Dr. P.C. Sahoo, Lecturer in the Department of Forensic Medicine and Toxicology and the doctors found two injuries on the person of the deceased which were ante mortem in nature, namely, extra vassation of decomposed blood covering an area 6cm x 5cm in middle part of inner aspect of left arm and there was also extra vassation of blood in upper part of the chest below both the clavicles in an area of 6cm x 8cm on left side and 8cm x 5cm on right side. According to P.W.9, those injuries could have been caused by blunt force impact and the autopsy findings were consistent with asphyxia.

14. The post mortem report which has been marked as Exhibit-6 shows that opinion regarding cause of death of the deceased Nini Sahu was reserved pending chemical examination of the viscera and Diatom test. Thus the above aspect shows that the doctors who held autopsy over the dead body of the deceased were not sure as to the cause of the death of deceased. Very unfortunately what happened to the viscera examination report and Diatom test of the deceased the record is silent. The evidence of P.W.9, the Professor and Head of the Department of Forensic Medicines and Toxicology of M.K.C.G. Medical College, Berhampur shows that the I.O. P.W.11 made query vide his letter marked Exhibit-9 dtd. 8.4.1994 on the following points:-

1. Whether both the ante mortem injuries found during post mortem examination of the deceased can be caused by heavy blow or by fall?
2. Whether both the injuries are fatal and can cause death of the deceased?
3. Can the death of the deceased caused by drowning when no water detected in both the lungs during post mortem?

Such queries of police were met by P.W.9 and Dr. P.C.Sahu, who had held autopsy over the dead body of the deceased. According to P.W.9 and his report which has been marked as Exhibit-7 the injuries which were detected on the arm and both sides of front chest of the deceased could have been possible by heavy blow but those were not fatal in ordinary course of nature. Similarly, Exhibit-7 and the evidence of P.W.9 shows that the body of the deceased was in a state of decomposition as death could have occurred two to three days

earlier and changes in the lungs might have been damaged due to effect of decomposition. P.W.9 further deposed that from the Biconvx Diatom detected from bone marrow and similar type of Diatom detected from water sample sent by the I.O. of Purusottampur Police Station they opined that death was due to drowning following assault. I may mention here at the cost of repetition that save and except the opinion expressed by P.W.9 and Exhibit-7 there is nothing on record to show about the Biconvx Diatom detected from bone marrow and Diatom detected from the water sample sent by the I.O. of Purusottampur Police Station. The I.Os. of this case who have been examined as P.Ws.10 and 11 have not breathed a word about sending of any water sample for examination by P.W.9 or by the State Forensic Laboratory. Exhibit-6 the post mortem report simply shows that the usual viscera of the deceased was preserved in saturated solution of common salt and handed over to the Constable in a sealed jar for chemical examination to be done at State Forensic Laboratory, Bhubaneswar. There is nothing on record to show if any such chemical examination was conducted at the State Forensic Laboratory, Bhubaneswar and the record is silent if any such report was submitted by the Forensic Laboratory after conducting the chemical examination of the viscera of the deceased. So also the record is silent as to the Diatom Test if any conducted in respect of the bone marrow and water sample sent by the I.O. There is no evidence at all as to where from water sample was collected and to

whom it was sent for testing. The evidence of P.Ws.10 & 11, the two I.Os. is silent on the above score.

15. As I have already discussed above, there is no dispute to the fact that the death of Nini Sahu, the wife of the appellant Kabiraj Sahu took place within seven years of her marriage and death of the deceased took place otherwise than under the normal circumstances. Since the allegation is that the deceased was subjected to torture by her in laws and husband on demand of dowry and since the charge was under Section 304-B of the Indian Penal Code, it has to be established by the prosecution that the deceased was subjected to cruelty or harassment by her husband or any relative of her husband in connection with any demand of dowry. In a very recent decision as reported in (2011) 48 O.C.R. (S.C.) 182 **Satya Narayan Tiwari @ Jolly and another -v- State of U.P.**, their Lordships of the Hon'ble the Apex Court have held that "There must be existence of a proximate and live link between the effect of cruelty based on dowry demand and the concerned death. If the alleged incident of cruelty is remote in time and has become stale enough not to disturb the mental equilibrium of the woman concerned, it would be of no consequence".

16. In the instant case, the prosecution heavily relied upon the evidence of P.W.1, who is brother of the deceased, P.W.2, the mother of the deceased and P.W.3 the father of the deceased to establish that the deceased Nini was subjected to torture by the appellants and so also by the two brothers of the accused Kabiraj

Sahu on demand of dowry after the marriage. The F.I.R. which was lodged by the P.W.1 the brother of the deceased shows that Nini was subjected to torture by her mother-in-law, father-in-law, three brothers-in-law and her husband. The F.I.R. so lodged by the P.W.1 has been marked as Exhibit-1. P.W.1, the informant so also P.W.3, the father of the deceased for the first time while deposing before the Court stated that before the marriage of accused Kabiraj with Nini took place, there was demand of dowry of cash of Rs.10,000/- by accused Arjuna, the father of the appellant. The accused appellant Kabiraj Sahu at the time of marriage was given cash of Rs.5,000/- as demand and gold ornaments of three and half tolas and balance amount of Rs.5,000/- was agreed to be paid later on. But when such balance amount could not be paid, the deceased complained of ill-treatment and assault by the accused persons. P.W.1 also deposed that her sister complained before him that she has been threatened to be killed by her husband if the balance money would not be paid. In his cross-examination P.W.1 deposed that he was not present when the marriage negotiation took place. The F.I.R. Exhibit-1 is also silent about any such demand of Rs.10,000/- by the accused appellant Arjuna for giving his son in marriage with Nini and P.W.1, the informant in his evidence at Para-11 has admitted that he has no satisfactory explanation as to why he omitted to mention in his F.I.R. about the demand of cash of Rs.10,000/- at the time of wedding and Rs.5,000/- was paid at the time of wedding with promise to pay

balance amount of Rs.5,000/- later on. P.W.10 one of the I.O., who had examined P.W.1 deposed that P.W.1 had not stated before him that accused Arjuna demanded dowry of Rs.10,000/- in cash and about complaining of torture by Nini before P.W.1 over non payment of balance amount and the promise which was made to pay the balance amount of Rs.5,000/-. P.W. 10 also deposed that P.W.1 had never stated before him that Nini had complained before him (P.W.1) that she was threatened by her husband to be killed unless the balance amount of Rs.5,000/- would be paid. Similarly, P.W.3 who is father of P.W.1 and of the deceased deposed before the Court about the demand of Rs.10,000/- by the accused Arjuna before the marriage of Nini took place with appellant Kabiraj Sahu and payment of Rs.5,000/- on the date of marriage to accused Kabiraj Sahoo with a promise to pay the balance Rs.5,000/- and the torture meted out to her daughter for non-fulfillment of such commitment and his further evidence is that three months after the wedding when Nini returned to his house complained about the ill-treatment on account of demand of dowry and that eight days before the death of his daughter, his wife P.W.2 when had been to see her daughter, the deceased had complained before her mother that she was being assaulted and tortured for the balance amount of dowry. But those facts which P.W.3 deposed on oath before the Court were not stated by P.W.3 before the I.O. (P.W.11), who had examined him. P.W.11 deposed that he had examined P.W.3-Saheba Sahoo and recorded his statement

under Section 161 Cr.P.C. He further deposed that P.W.3 did not state before him that the bride groom demanded Rs.5000/- on the altar and P.W.11 also deposed that P.W.3 had also stated before him that due to his bad economic condition he agreed for 'Tola Kanya' form of marriage of his daughter. It is an admitted fact that the marriage of accused-Kabiraj Sahu with deceased Nini was a 'Tola Kanya' form of marriage. Thus, the P.Ws. 1 and 3 did not state before the I.Os. P.Ws. 10 and 11 about the demand of dowry and payment of Rs.5,000/- to accused-Kabiraj and promise to pay balance of Rs.5,000/-. The F.I.R. is also silent in that regard. Thus, I have no hesitation in my mind to hold that whatsoever P.Ws. 1 and 2 have deposed are later developments of the story and cannot be believed and accepted, especially in view of the evidence of P.W.2, who is own mother of the deceased and the wife of P.W.3 and mother of P.W.1. P.W.2 deposed that the bride groom demanded dowry of Rs.10,000/- and gold ornaments for 3 tolas. But they agreed to pay of Rs.5,000/- at the time of wedding with a promise to give balance amount later on as they were in shortage of money. But in her cross-examination this P.W.2, the mother of the deceased deposed that they gave three tolas of gold as it was customary. Thus if we believe the evidence of P.W.2 that they had given 3 'Tolas' of gold ornaments to the deceased as per the custom then the question of demand of three and half tolas of gold by the appellant as has been deposed by the P.Ws 1, 2 & 3 cannot be believed. P.W.2 has specifically deposed on oath before the Court that

her daughter came to their house four to six months after the marriage and subsequently they brought her when she conceived but she never breathed a word if her daughter complained of any ill-treatment meted out to her by her in-laws including her husband on demand of dowry of Rs.5,000/-. On the other hand, P.W.2 deposed that the deceased was alright and after she went back to her in-laws house with the baby "Gandagola" (trouble) started. This evidence of P.W.2 negatives the entire case of the prosecution and the evidence of P.Ws. 1 & 2 that the deceased was subjected to ill-treatment and torture on demand of the balance money of Rs.5,000/-. P.W.2 also deposed that eight days prior to the death of the deceased she herself and her daughter Amulya had been to the house of Nini and stayed there for two days and Nini complained before her that her husband and in-laws were quarrelling with her as the balance amount of Rs.5000/- had not been given. But in her cross examination P.W.2 deposed that during their stay for two days when they visited the house of Nini eight days before her death they were well treated there. P.W.2 nowhere has breathed a word if the deceased had complained before her to have been assaulted and tortured for the balance amount of Rs.5000/-, though P.W.3 her husband speaks of that. It is seen from the evidence of P.Ws 1 and 2 that one Hadu Sahu and Ananda Sahu, who are their relations initiated the marriage proposals, but very strangely enough both Anand Sahu and Hadu Sahu had been withheld from the Court and had not been examined.

Very peculiarly enough also P.W.3 has admitted in his evidence that he had not lodged F.I.R. about the demand of dowry or ill-treatment meted out to his daughter on account of such dowry. It is seen from the evidence on record that the gold ornaments which were given to the deceased were all in her body when her dead body was recovered from the river ghat.

Thus, it is seen that when P.Ws. 1 and 3 during investigation did not state before the Police regarding the demand of dowry or torture at the hands of the appellants for non-fulfillment of the demand of dowry and when allegation in the F.I.R. is also omnibus and the developments made by the witnesses during trial lead to the irresistible conclusion that the prosecution has made deliberate improvements to falsely rope in the appellants for which it would be difficult to place reliance on the testimony of P.Ws. 1, 2 and 3 and in that context reliance can be placed in a Division Bench decision of our High Court reported in 2008, 48 O.C.R. 737, ***Haladhar Behera V. State of Orissa*** and also reliance can be placed on the same point in a judgment of the Apex Court as reported in AIR 2009 S.C. 2913, ***Nepal Singh V. State of Haryana***.

17. P.W.4 deposed in her examination-in-chief that at the time of wedding of Nini with accused-Kabiraj Sahu Rs.5000/- was given with a promise to pay Rs.5000/- later on. But she had not breathed a word if those Rs.5000/- was paid as per the demand of the appellants. The evidence of P.W. 4 that Nini complained before her

that she was assaulted and ill-treated at her in-laws house as her father did not pay the balance amount of Rs.5000/- cannot be believed as it was an hearsay evidence which she had admitted in her cross-examination. Very surprisingly P.W.5, who is the own brother of P.W.3 and paternal uncle of the deceased he has not at all breathed a word about the demand of Rs.10,000/- and three and half tolas of gold by the appellant at the time of marriage of the deceased with the appellant Kabiraj Sahu and payment of Rs.5,000/- at the time of marriage and promise by P.W.3 to pay the balance amount later on. P.W.5 has not at all breathed a word if her niece namely, Nini was subjected to cruelty by the appellants on demand of dowry i.e., payment of the balance of Rs.5,000/- . P.W.5 only speaks that in his presence, inquest over the dead body of the deceased was held and the Inquest Report has been marked as Exhibit-2. P.W.6 only deposed that she had seen Nini the wife of Kabiraj Sahu going towards the river carrying her baby before dawn time and though she enquired as to why she was going towards river carrying such a small baby the deceased paid a deaf ear and on the next day morning when search was made for her she disclosed that the deceased was going towards the river side. It is also her evidence that there was no quarrel in the family of the accused persons and the accused persons never tortured the deceased Nini and she was groomed with all care like a daughter. The evidence of P.W.6 in her cross-examination that the deceased Nini was never tortured by the accused persons and she was treated like a

daughter has not been challenged by the prosecution by declaring her hostile. Thus the prosecution has accepted the evidence of P.W.6. The evidence of P.W.6 further shows that female folk of their village used to go to river prior to dawn to answer the call of nature and to take bath. P.Ws.7 & 8 are the two Police constables who accompanied the dead body of the deceased to M.K.C.G. Medical College for post mortem examination. P.Ws.10 & 11 are two I.Os. and P.W.12 is the only seizure witness. Thus the evidence of P.Ws.7, 8, 10, 11 and 12 do not at all throw any light on the occurrence and about the death of the deceased and the culpability of the appellants.

18. It is an admitted fact that the dead body of the deceased was found floating in river Rushikulya i.e. to the South of village Jalsarkhandi in a highly decomposed state and the witnesses to the inquest opined that the death might have occurred because of drowning in river Rushikulya.

19. In the instant case, the evidence of P.Ws.1,2 & 3 cannot come within the purview of Section 32(1) of the Evidence Act and such statement cannot be acted upon when there is no specific evidence that the deceased was subjected to any cruelty or ill-treatment in connection with demand of dowry. The statement of P.Ws.1,2 & 3 are inadmissible as there is no satisfactory evidence to show that the transactions which resulted in her death was homicidal nor suicidal. Very unfortunately, the dead body of the deceased was recovered from the river 'Ghat' and no trace of her baby girl could be detected. The

evidence on record shows that the occurrence took place when river Rushikulya was in spate and the same has been admitted by P.W.1, the informant as he deposed that it was the time of high flood. The appellants have resorted to plea during their examination under Section 313 of the Cr.P.C. that the deceased might have been swept away by the flood when she had gone to take her bath and such plea of the appellants appear more believable and probable in view of the evidence of P.W.6 that they had seen the deceased going to the river side with her baby. It is the further evidence of P.W. 6 that after taking bath while they were returning they found Nini going to the river side with her baby as most of the female folk of their sahi go to river for answering call of nature and to take their bath.

20. From the evidence of P.W.9 it is seen that the doctor who held autopsy over the dead body of the deceased could not opine as to the probable cause of death of the deceased. Thus when the doctor could not opine the cause of the death and entertained doubt it cannot be conclusively held that the death of the deceased was a homicidal or suicidal one. It is true that the death of the deceased took place other than under normal circumstances but there is no evidence worth the name to show that accused-Kabiraj Sahu or his family members after assaulting the deceased threw her dead body in river Rushikulya. There is also no evidence to show that the deceased was subjected to torture by her in-laws which drove her to commit suicide. Therefore, the evidence of P.Ws. 1, 2 and 3 cannot be looked

into for any purpose as it has no connection with any circumstance or transaction which resulted in the death of the deceased as the death was neither homicidal nor suicidal but was accidental and P.W.9, the Doctor himself deposed that from the post mortem examination it is not possible to opine if the death was suicidal or accidental and he has also deposed that when a person is accidentally swept away and he tries to escape and if he dashes accidentally against any log the injuries which they found on the person of the deceased could have been caused. Thus, provisions of Section 32(1) of the Evidence Act cannot be attracted to this case and in that context reliance can be placed on a decision of the Apex Court as reported in (2009) 43 OCR (SC) 954 in the case of ***Bhairon Singh Vrs. State of Madhya Pradesh.***

I have carefully gone through the judgment rendered by the learned Asst. Sessions Judge, but I found that the learned court below was swayed away with surmises and conjectures as the learned trial court in page 12 of the judgment has mentioned that “the movement of the deceased in that odd hour to be unnatural and when she did not give any reply to the query of P.W.6 that shows her state of mind at the relevant time and she must have been engrossed with anguish and grief and wanted to end her life”. I have no hesitation to hold that those are purely surmises and conjectures on the part of the Court. While appreciating evidence, it is to be borne in mind that the Court must not be swayed away by the horror of the crime or the

character of the accused. Foul crime imposes a greater caution on the Court which must resist the tendency to look beyond the file. The Apex Court in a decision reported in 2011 AIAR (Criminal) SC 124 in the case of ***Rathinam @ Rathinan Vrs. State of Tamilnadu & another*** and also in another decision as reported in (2002) 7 SCC 317 in the case of ***Ashish Batham Vrs. State of Madhya Pradesh***, have observed as follows :-

“Realities or truth apart, the fundamental and basic presumption in the administration of criminal law and justice delivery system is the innocence of the alleged accused and till the charges are proved beyond reasonable doubt on the basis of clear, cogent, credible or unimpeachable evidence, the question of indicting or punishing an accused does not arise, merely, carried away by the heinous nature of the crime or the gruesome manner in which it was found to have been committed. Mere suspicion, however, strong or probable it may be is no effective substitute for the legal proof required to substantiate the charge of commission of a crime and graver the charge is, greater should be the standard of proof required. Courts dealing with criminal cases at least should constantly remember that there is a long mental distance between “may be true” and “must be true” and this basic and golden rule only helps to maintain the vital distinction between “conjectures” and “sure conclusions” to be arrived at on the touchstone of a

dispassionate judicial scrutiny based upon a complete and comprehensive appreciation of all features of the case as well as quality and credibility of the evidence brought on record”.

21. In the aforesaid touch stone and observations of the Hon’ble Apex Court and even if the facts and circumstances of a case may give rise to a strong suspicion against the appellants but the strong suspicion cannot take place of proof. This view of the Hon’ble Apex Court has also been reiterated in another decision of the Apex Court as reported in 2011 AIAR (Criminal) SC 253 in the case of M. Nageshwar Rao Vrs. State of Andhra Pradesh.

22. Thus, on an analysis of the evidence on record and the facts of this case there is no proof of the appellants guilt and on the basis of evidence on record it would be quite unsafe to hold them guilty of the offences under Sections 498-A and 304-B read with Section 34 of the I.P.C. as well as under Section 4 of the D.P. Act.

23. In the result, the impugned judgment and the sentences of the learned court below are set aside and the appellants are acquitted of the charges. The appellants Arjuna Sahu and Sundari Sahu are discharged from their bail bonds and are set at liberty forthwith. So far as accused-Kabiraj Sahu is concerned, very unfortunately right from the date of his conviction dated 14.02.1996 he was in custody and undergone the full term of sentences as he was sentenced to undergo R.I. for ten years under Section 304-B of the I.P.C. and also he was sentenced to undergo R.I. for one year and to

pay fine of Rs.500/- in default to undergo further R.I. for three months more for the offence under Section 498-A of the I.P.C. and to undergo R.I. for six months for the offence under Section 4 of the D.P. Act with a direction that all the substantive sentences are to run concurrently subject to set off. The appellant-Kabiraj Sahu if not released from the jail after undergoing the sentences is directed to be released from the jail forthwith unless his detention is required in any other case.

Accordingly, the Criminal Appeal stands allowed.

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B.K.Misra, J.