

# **HIGH COURT OF ORISSA, CUTTACK**

## **GOVERNMENT APPEAL No. 6 OF 1999**

From the judgment dated 30.06.1997 passed by Shri M.K.Mohanty, 1<sup>st</sup> Additional Sessions Judge, Berhampur in S.C. No. 26 of 1996/S.C. No. 168 of 1996 GDC..

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| State of Orissa | ..... | Appellant |
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### **Versus**

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| Satyanarayan Das & another | ..... | Respondents |
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For Appellant : Mr. R.P.Mohapatra,  
Addl. Standing Counsel.

For Respondents : M/s. S.D.Das, L.Samantaray,  
A.K.Nayak, B.K.Sinha,D.Dhar,  
B.Patnaik, H.S.Satapathy,  
A.Mohanty, advocates.

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**PRESENT :**

**THE HON'BLE MR. JUSTICE D.DASH**

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**Date of hearing : 22.04.2015 : Date of judgment : 30. 04.2015**

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The State has called in question the order of acquittal passed by the learned 1<sup>st</sup> Additional Sessions Judge, Berhampur in S.C. No. 26 of 1996/S.C. No. 168 of 1996 (GDC) acquitting the respondents of the charge under sections 498-A/304(B)/201/34 IPC.

2. The case of the prosecution is that Urmila, the sister of the informant of the case had married the respondent no.1-Satyanarayan more than seven years prior to her death. It is stated that the respondents and other family members were subjecting her to cruelty

by ill treating her and they were also assaulting and abusing her without supplying food and were coercing her to fulfill demand of dowry of Rs.5,000/- by making arrangement for being paid by members of her father's family . The informant succumbing to the pressure mounting upon his sister arranged Rs.2,500/- and had paid it to the respondents. Still then the situation did not improve and it continued as before leading to the result that the deceased Urmila was not able to lead happy conjugal life receiving good treatment from the respondents and others.

The younger brother of the informant, namely, Prasant Kumar Tripathy when had been to the house of Urmila on 18.06.1994 had found her in good health and spirit. But on the next day, information came to be received that Urmila was no more. So the informant went to the house of the Urmila where she was found lying dead. In view of the earlier state of affair as was prevailing, suspicion arose in his mind about some foul play in the said death. So he lodged the FIR at the Police Station.

3. Receiving the information, necessary case was registered and investigation was taken up and on closure of the same, police having submitted the charge sheet, the respondents faced the trial. It may be stated here that in course of the investigation, the postmortem examination was made over the dead body of Urmila, seizure of incriminating materials have also taken place and the Investigating Officer examined witnesses with regard to the marriage, living condition

of Urmila at her in-laws place and concerning other such related facts.

During trial, prosecution examined twelve witnesses when defence examined three. Besides the oral evidence, prosecution has proved the FIR, Ext.1, and the postmortem report Ext.6 and other documents.

4. The trial court on evaluation of evidence and upon their appreciation has come to the conclusion that the prosecution has not been able to establish the foundational facts for sustaining the charge under Section 304(B) IPC. It has found the evidence to be deficient so far as the demand of dowry and subjection of cruelty are concerned. The prosecution has also been blamed in the case for having not been able to prove that the death of Urmila had taken place otherwise than under normal circumstance which has remained as a basic infirmity in the case.

5. Learned counsel for the State submits that in the matter of appreciation of the evidence, the court below has acted one sidedly and on flimsy ground has discarded the evidence of the prosecution witnesses with regard to the cruelty upon Urmila and also the demand of dowry being advanced consistently by the respondents. With such findings, the order of acquittal has been recorded against the respondents the same are now the subject matter under consideration in this appeal.

It is further submitted that in the peculiar fact situation, the trial court ought to have drawn necessary inference because of the fact

that the respondents soon after the incident have maintained complete silence without giving any explanation with regard to the death of Urmila, when circumstances show that her death was within their special knowledge. Therefore, he contends that it is a fit case for setting aside the acquittal order.

Learned counsel for the respondents on the contrary supports the findings rendered by the trial court. He contends that the marriage in the present case having taken place eight years prior to her death, the charge under Section 304(B) IPC cannot sustain even upon establishment of the factum of death otherwise than under normal circumstance etc. He further, contends that the evidence with regard to the demand of dowry and cruelty have rightly been found to be unworthy of acceptance. Therefore, he urges that the appeal is devoid of merit.

6. Before going to appreciate the rival submission, it is felt apposite to take note of the settled position of law with regard to the scope of the appeal and the power in the matter of interference with the order of acquittal.

It has been held in case of **Basappa Vrs. State of Karnataka**; (2014) 57 OCR 1044 that the High Court in an appeal under section 378 Cr.P.C. is entitled to reappraise the evidence and put the conclusions drawn by the trial court to test but the same is permissible only if the judgment of the trial court is perverse. Relying the case of **Gamini Bala Koteswara Rao and others – Vrs. State of**

**Andhra Pradesh;** (2009) 10 SCC 639, it has been held that the word “perverse” in terms as understood in law has been defined to mean ‘against weight of evidence’. In **‘K. Prakashan Vrs. P.K. Survenderan;** (2008) 1 SCC 258, it has also been held that the Appellate Court should not reverse the acquittal merely because another view is possible on evidence. It has been clarified that if two views are reasonably possible on the very same evidence, it cannot be said that prosecution has proved the case beyond reasonable doubt (Ref.:- **T. Subramaniam Vrs. State of Tamil Nadu;** (2006) 1 SCC 401). Further, the interference by appellate Court against an order of acquittal is held to be justified only if the view taken by the trial court is one which no reasonable person would in the given circumstances, take (Ref.:- **Bhima Singh Vrs. State of Haryana;** (2002) 10 SCC 461).

7. In view of rival submission, keeping in mind the settled position of law as above stated, let me now proceed to judge the sustainability of the finding rendered by the trial court.

Admittedly, the marriage between the respondent and the deceased-Urmila had taken place on 08.06.1988 and Urmila died on 19.07.1994 which is after expiry of seven years. Hence the basic fact for establishment of charge under Section 304(B) IPC is wanting.

Next coming to the evidence relating to the cause of death, the evidence of doctor is not specific and pin pointed. Thus here is a case where the court is not in a position to hold as to under what circumstance/s, the death of Urmila had been taken place.

Interestingly, the evidence stands that one day before the death of Urmila when her brother was in their house, Urmila was found to be quite happy. No evidence is forthcoming that she had expressed during that time about any cruelty being meted out at her. Regarding the demand of dowry and torture on account of non-fulfillment of the same, the trial court has ultimately held the prosecution to have failed to establish the charge on that score against the respondents. There is no evidence that the respondents were either frequently quarreling with the deceased for some reason or other or that were having exchange of hot words on any earlier occasion. The evidence about demand of dowry and torture being laid in a generalized manner without any such specific instance being cited appears to have rightly been refused by the trial court for their acceptance to hold the establishment of the complicity of the respondents.

In view of all these, this Court finds no perversity or even any such serious infirmity or illegality on the part of the trial court in appreciating the evidence in order to base the finding against the prosecution. Accordingly the finding rendered by the trial court against the prosecution to have failed to establish the charges by leading clear, cogent and acceptable evidence beyond reasonable doubt appears to be wholly defensible.

8. Resultantly, the appeal stands dismissed.

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***D. Dash, J.***

