

IN THE HIGH COURT OF ORISSA AT CUTTACK

GCRLA No.09 of 2014

From the judgment of acquittal dated 02.03.2006 passed by the learned Additional Sessions Judge, Jharsuguda in Sessions Trial Case No.41 of 2005.

State of Orissa

....

Appellant

-versus-

Banamali Kharsel & Others

....

Respondents

**Appeared in this case by Hybrid Arrangement
(Virtual/Physical Mode):**

<i>For Appellant</i>	-	Mr.S.S.Kanungo, Additional Government Advocate
<i>For Respondent</i>	-	Mr.D.Nayak, Advocate

CORAM:
MR. JUSTICE D.DASH
DR. JUSTICE S.K.PANIGRAHI

Date of Hearing : 08.12.2022 : Date of Judgment: 23.12.2022

D.Dash,J. The State, in this Appeal, has called in question the judgment of acquittal dated 02.03.2006 passed by the learned Additional Sessions Judge, Jharsuguda in Sessions Trial Case No.41 of 2005 arising out of G.R Case No. 518 of 2003 corresponding to Laikera P.S Case No.53 of 2003 of the Court of the learned S.D.J.M., Sambalpur.

The Trial Court has acquitted the respondents (accused persons) of the charges under section 498-A/302/304-B/34 of the Indian Penal

Code, 1860 (in short, 'the IPC') and section 4 of Dowry Prohibition Act, 1961 (D.P.Act).

2. The prosecution case is that accused Banamali had married the daughter of Biseswar Sunani, the Informant (P.W.1) sometime in March, 2000. On 21.05.2005, the daughter of the informant (P.W.1) telephonically informed that she was ill. Therefore, the informant (P.W.1), on the next morning around 9 a.m., went to the house of his son-in-law. He saw his granddaughter was suffering from fever. He then could know that the reason for calling him was not the illness of his daughter, but for something else. The daughter of the informant, seeing the informant, started crying and narrated her misery as to how she was physically and mentally tortured for non-fulfillment of demand of Rs.20,000/-. The Informant (P.W.1) then consoled his daughter (deceased) and took his granddaughter to Kuchinda for treatment. In the evening, one Arun Gaund informed him that his son-in-law having fallen ill had been admitted in the hospital. Hearing this news, the Informant (P.W.1) and his wife came to the village and there, they were surprised to see their daughter lying dead in a room. They also noticed vomited like substances of green colour scattered near the dead body. The Informant (P.W.1) then could immediately suspect that it was a pre-planned murder for non-fulfillment demand of dowry which the accused persons were demanding and for non-fulfillment of which, they were ill-treating the deceased which they had earlier also confessed and promised not to repeat.

3. The written report to the above fact was presented by the father of the deceased (P.W.1) to the Assistant Sub-Inspector of Police, (ASI), Sahaspur police Outpost (P.W.12) who had gone to the spot, after

receiving the Very High Frequency (VHF) message from the then Officer-in-Charge (O.I.C.) of Gobindpur Police Station. Receiving the said report at the spot, the A.S.I. (P.W.12) took up preliminary investigation and submitted a report to the OIC of Laikera Police Station (P.W.13) for registration of the case. The O.I.C. Laikera Police Station then immediately registered Laikera P.S. Case No.53 of 2003 and rushed to the spot. He held inquest over the dead body of the deceased in presence of the Executive Magistrate. The dead body was sent for post mortem examination and as advised by the Doctors (P.W.3 and P.W.4), the viscera of the deceased, being preserved, was later on sent for chemical examination through Court. The Investigating Officer (P.W.13) then also seized the incriminating articles and prepared the seizure list to that effect. The Chemical Examination Report (Ext.11) came to the effect that it was a suspected case of poisoning. On completion of investigation, Final Form was submitted in the Court of learned S.D.J.M., Sambalpur placing the accused persons for trial for commission of above offences.

4. Learned S.D.J.M., Sambalpur, on receipt of the Final Form, having taken cognizance of the offences, after observing the formalities, committed the case to the Court of Sessions. That is how the trial commenced after framing of the charge against the accused persons.

5. In the trial, the prosecution in total has examined 13 witnesses. As already stated, P.W.1 is the father of the deceased who had lodged a written report which has been treated as F.I.R (Ext.2). The younger brother of the deceased has been examined as P.W.2. P.W.3 and P.W.4 are the Doctors who had conducted post mortem examination over the dead body of the deceased. P.W.6 and P.W.7 are the relations of P.W.1

whereas P.W.8 to P.W.11 are the persons who knew the deceased and her family members. The A.S.I. of Police who was then attached to the Sahaspur Police Out-post has come to the witness box as P.W.12 whereas the O.I.C of the Laikera Police Station has been examined as P.W.13 and these two had conducted the investigation of the case.

6. Besides leading the oral evidence through the above witnesses, the prosecution has proved the documents which have been admitted in evidence and marked Ext.1 to 11, the important of those are Ext.2, the FIR; Ext3, the inquest report and Ext.5 is the Post Mortem Report. The Chemical Examiner's Report is Ext.11 whereas the document which had come into being during settlement between the parties is Ext.1.

7. The defence plea is that of complete denial. However, the accused persons have not tendered any evidence in support of their defence.

8. The Trial Court, on examination of evidence and their evaluation, has held that the prosecution has not been able to establish any of the charges against the accused persons beyond reasonable doubt.

9. Learned counsel for the State submitted that the Trial Court has failed to properly appreciate the evidence in the backdrop of the proven facts through evidence that the death of the deceased having taken place in the house of the accused persons, it was not under normal circumstance when the witness have stated about the demand of dowry and torture upon the deceased on account of the non-fulfillment of the same and for that the presumption as available under section 113-B of the Evidence Act stood before it as the incident was within a period of 7 years of marriage. He submitted that the Trial Court has erred in disbelieving the evidence of the prosecution witnesses viewing certain

discrepancies which are too minor and normally occurs. He, further submitted that the evidence of the prosecution witnesses being wholly reliable and acceptable, the Trial Court ought not to have held that the prosecution has been able to establish the charges against the accused persons when in this case, the defence has not been able to rebut the presumption standing drawn under section 113-B of the Evidence Act.

10. Learned counsel for the Respondents (accused persons) submitted all in favour of the findings returned by the Trial Court. According to him, the prosecution is not coming forward to say that it was a case of forcible administration of poison and as per the evidence of the Doctors, P.W.3 and P.W.4, read with the Chemical Examiner's Report (Ext.11), it being a case of intake of poison without use of any external force, in the absence of any clear, cogent and acceptable evidence that the deceased was subjected to cruelty shortly before the death, the Trial Court has rightly acquitted the accused persons of the charges.

11. Before entering into the arena of examination as to the merits of the rival contentions in ascertaining as to the interference with the order of acquittal; it is felt proper refer to the principles to be followed in an appeal against acquittal.

It has been held in case of *Syed Peda Aowila –V- Public Prosecutor High Court of A.P; AIR 2008 SC 2573*; that the Appellate Court, considering the judgment of the acquittal, can interfere only when there are compelling reasons for doing so, in holding the judgment is clearly unreasonable, wherein the relevant and convincing materials have been unjustifiably eliminated in the process.

Where the findings recorded by the Trial Court are not perverse or contrary to material on record and there is no infirmity in the reasons

signed by the Trial Court for acquitting the accused, no interference is warranted. (*Ref:-State of Gujarat V. Jamabhai Ramabhai Chauhan Solaji Tal 2006 CRI. L. J. 2392 and Braham Swaroop & Another Versus State of Uttar Pradesh; (2011) 6 SCC 288.*)

As stated in a catena of decisions of Supreme Court that in an Appeal against acquittal certain cardinal rules are required to be kept in mind namely, (a) that there is a presumption of innocence in favour of the accused which has been strengthened by the acquittal of the accused by the trial court (b) if two views are possible, a view favourable to the accused should be taken, (c) that the trial judge had the advantage of looking at the demeanour of the witnesses and (d) the accused is entitled to a reasonable benefit of doubt. Two views being reasonably possible; one favouring the accused is possibly preferred.

12. Viewing in the light of the above legal principles, this Court is now called upon to consider whether the prosecution evidence was such as to leave an inescapable conclusion regarding guilt of the accused persons and the Trial Court if has wrongly concluded in their favour wholly over looking/ignoring such evidence which if would stand as the compelling reason before us warranting interference with the order of acquittal.

13. The prosecution in the case at hand much relies upon the version of P.W.1. It is his evidence that his elder sister-in-law was the mediator for the marriage and before marriage, accused Janmejaya, the father-in-law of the deceased had demanded a television and cycle. He in clear terms has stated that there was no demand from the sides of accused persons at the time of marriage and one year after the marriage, the deceased gave birth to a female child. The deceased had come to his

house after the birth of the child and then was taken back to her in-laws place. He then says that 8-10 days thereafter, deceased was ill-treated and assaulted by the father-in-law i.e accused Janmejaya for which accused Banamali, husband of the deceased and son-in-law of P.W.1 brought the deceased back and there, the deceased had disclosed that accused Janmejaya used to assault her demanding a sum or Rs.20,000/- for being spent in electrifying the house. The evidence thus appears that accused Banamali (son-in-law of P.W.1) had then wanted that the deceased should stay outside and away from his father and in his father-in-law's place. Thus the evidence is not on the score that accused; Banamali was demanding the said sum and was ill-treating and torturing the deceased. It is also stated that there was a meeting in the village and there the dispute has been amicably resolved, whereafter the deceased was taken back by the accused persons. The death is said to have taken place fifteen (15) days thereafter. He, also states that the television had been presented by his nephew and the cycle was presented by his brother-in-law namely Sibulal and it is also not said that those articles had been given for meeting the demands advanced. This witness has stated to have visited the house of the accused fifteen to twenty (15-20) times after the marriage of her daughter but he does not say that there was any ill-feeling between them. He also says that after the birth of his granddaughter, his daughter and son-in-law were residing separately in the same house under separate mess and his son-in-law that is accused Banamali was regularly coming to look after his daughter during the period, when his daughter and granddaughter were staying in the house of this P.W.1. This P.W.2, who is the son of P.W.1 and the brother of the deceased, is stating differently from that P.W.1 and that contradicts the evidence of P.W.1. P.W.7 again says that this demand of Rs.20,000/-

had been made by all the accused persons, one or two years after the marriage and three to four months before the Panchayati in the village and that after expiry of four months from that Panchayati, the incident took place. Thus there stands no consistency in the evidence as to demand and torture thereof.

14. With the above evidence, when we go through the evidence of P.W.4 and 5, it is seen that they had not seen any external injury on the person of the deceased. The death was suspected to be due to poisoning. The viscera being chemically examined, the report (Ext.11) reveals that the cause of death was on account of intake of poison.

15. When admittedly, the death has taken place within a period of 7 years of marriage and such death of the deceased was otherwise than under normal circumstances, the evidence of prosecution witnesses however as already discussed is not clear, cogent and acceptable that the accused persons were treating the deceased with cruelty and harassing her in connection with demand of dowry or otherwise. In such state of affairs, according to us, the fundamental facts for drawal of the presumption under section 113-B of Evidence Act have not been established beyond reasonable doubt so as to call upon the accused persons to rebut the said presumption. Thus, we do not find any infirmity in the conclusion arrived at by the Trial Court that the prosecution has failed to prove any of the charges against the accused persons beyond reasonable doubt.

16. On a conspectus of analysis of the evidence made hereinbefore, we find that the State has not been able to cite any compelling reason to persuade us to take a different view than what has been taken by the Trial Court in saying that the acquittal of the accused persons of the

charges as has been recorded by the Trial Court is unreasonable being based on perverse appreciation of evidence by unjustifiably eliminating the relevant and convincing evidence as obtained in the Trial. Thus, we are of the view that the prosecution has failed to make out a case as to upset the order of acquittal.

17. In the result, this Court, finding no merit in the Appeal, records its dismissal. The Respondents (accused persons) be discharged from their bail bonds.

Dr.S.K.Panigrahi, J.

I Agree.

(D. Dash)
Judge

(Dr.S.K.Panigrahi)
Judge