

IN THE HIGH COURT OF ORISSA AT CUTTACK

JCRLA NO.19 OF 2012

From the judgment of conviction and order of sentence dated 29.10.2011 passed by the learned Additional Sessions Judge, Talcher in C.T.(S) Case No.06 of 2011.

Angada Naik

....

Appellant

-versus-

State of Odisha

....

Respondent

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

For Appellant

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Mr. B.B. Routray,
Advocate.

For Respondent

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Miss Samapika Mishra
Addl. Standing Counsel.

CORAM:

MR. JUSTICE D.DASH

DR. JUSTICE S.K. PANIGRAHI

DATE OF HEARING :16.12.2022 : DATE OF JUDGMENT:23.12.2022

D.Dash,J. The Appellant from inside the jail has filed this Appeal in questioning the judgment of conviction and order of sentence dated 29.10.2011 passed by the learned Additional Sessions Judge, Talcher in C.T. (S) Case No.06 of 2011.

By the same, the Appellant (accused) has been convicted for commission of offence under section-302 of the Indian Penal Code (for

short 'the IPC') and sentenced to undergo imprisonment for life and pay fine of Rs.2,000/- in default to undergo rigorous imprisonment for a period of six months.

2. The prosecution case is short is that in the early part of the year, 2010, the niece of the Informant, P.w.16 eloped with the accused. The marriage between the accused and the niece of the informant i.e. the deceased, was performed by exchange of garland in the Mangala Temple in village Gurujang. Thereafter, they lived in the house of the accused at Gurujang as husband and wife. However, after 4 to 5 months, accused started torturing the deceased, Sridevi in demanding dowry of Rs.50,000/-. The deceased then had come to her paternal house and narrated the incident to her parents. While expressing their inability to comply with the said demand of the accused, they however had assured to give the amount later. Accordingly, the accused brought his wife back to his house. It is stated that the accused thereafter again started torturing the deceased due to non-fulfillment of demand and this fact was communicated by deceased-Sridevi to her mother over telephone on 03.09.2010 night. On the very next morning, one Kabuli Nayak informed the parents of the deceased-Sridevi about the serious condition of their daughter. Shortly, thereafter he informed them about the death of Sridevi. Getting this information, the parents and other

relations of the deceased went to the house of the accused and found the dead body of Sridevi lying on the verandah containing ligature marks on her neck. Suspecting that it is the accused and the family members who had killed Sridevi on account of non-fulfillment of demand of Rs.50,000/-, the matter was reported at Talcher Police Station. Immediately the case being registered and investigation commenced.

On completion of investigation, the Final Form was submitted placing the accused to face trial for commission of offence under section-498-A/304-B of the IPC and section-4 of the D.P. Act, alternatively, under section-302 of the IPC.

3. Learned Sub-Divisional Judicial Magistrate, Talcher having received the Final Form, took cognizance of the above noted offences and after observing the formalities committed the case to the Court of Sessions. That is how the trial commenced by framing charge against the accused person for offences as aforestated.

4. The defence plea is that of complete denial and false implication.

However, it reveals the tenure of cross-examination advanced from the side of the defence to the prosecution witnesses during the

trial, a case that Sridevi had committing suicide by hanging has been projected.

5. The prosecution during trial has examined in total 21 witnesses including the Informant-P.W.16. The circumstantial evidence come through the lips of P.W.1, 6 and 20. The witnesses to the inquest have been examined as P.Ws. 2 and 3. The scribe of the F.I.R. is P.W.4. The witnesses to the seizures of incriminating articles are P.Ws.5, 10, 11 and 19. Two witnesses who have stated about incident after the occurrence are P.Ws. 7 and 17. The Doctor who had held autopsy over the dead body has come to the witness box and examined as P.W.9. The Priest who had performed the marriage is P.W.13 and the parents of the deceased are P.Ws. 14 and 15; whereas the paternal aunt of the deceased is P.W.18. The Investigating Officer has come to the witness box at the end and he is P.W.21.

The accused has however not adduced any evidence either oral or documentary in support of his defence.

6. The trial court on examination of evidence and their evaluation has held the prosecution to have failed to prove the charges under section-498-A/304-B of the IPC and section-4 of the D.P. Act. The accused therefore, has been acquitted of those charges. But the trial court has found the evidence on record to be enough to establish the

charge under section-302 of the IPC as against the accused beyond reasonable doubt. Accordingly, the Trial Court has convicted the accused thereunder and sentenced him as aforestated.

7. Learned Counsel for the Appellant submitted that the evidence let in by the prosecution are unsafe to be relied upon to conclude that the charge against accused under section-302 of the IPC has been established beyond reasonable doubt. According to him, the circumstances which have been projected by the prosecution have not been proved through clear, cogent and acceptable evidence and here even if those circumstances are viewed cumulatively, they do not complete the chain in every respect so as to say that all the hypothesis other than the guilt of the accused stands ruled out. In support of the above, he has invited the attention of the Court to the evidence of the prosecution witnesses which we would discuss a little later. He, therefore, submitted that the finding of guilt of the accused has been returned by the trial court cannot be sustained.

8. Learned Counsel for the State refuting the above submissions contained that here the trial court has taken all the pain to examine the evidence in great detail in ascertaining as to whether the circumstances projected from the side of the prosecution have been fully established. He further submitted that the trial court did commit no mistake in

ultimately concluding, with the proven circumstances that the chain of events is complete in every respect excluding all the hypothesis other than the guilt of the accused. According to him, the chain of evidence is so complete that those do not leave any reasonable doubt for the conclusion consistent with the innocence of the accused and that in all human probability; the act must have been done by the accused.

9. Keeping in view the submissions made; we have carefully gone through the judgment passed by the Trial Court and we have also extensively travelled through the evidence adduced by the prosecution witnesses both oral and documentary.

There is no dispute that the prosecution case is based on circumstantial evidence. At the outset, it be stated that and the trial court on going through the evidence of the Doctor, P.W.9, who had conducted the postmortem examination over the dead body of the deceased and submitted his report, Ext.4 as also the evidence of other witnesses including the I.O., P.W.21, who had held the inquest over the dead body and other witnesses has arrived at a conclusion that the death of the deceased was homicidal. In fact the evidence of P.W.9 and his report, Ext.4 are very clear on this aspect. We therefore, find no such reason or justification to accord our disapproval to it. The accused has been acquitted of the charges under section-498-A/304-B of the

IPC and section-4 of the D.P. Act and is stated at the Bar that no Appeal has been filed from the side of the prosecution in questioning the order of acquittal of the accused of those charges.

10. The evidence on record being gone through, it is seen that the accused and the deceased were residing in the same house which consists of one room. It reveals from evidence that the house of the brother of the accused and that of the accused are situated nearby. It emerges from the evidence that those brothers of the accused were living separate from the accused. The evidence of the prosecution witnesses i.e. P.Ws. 12, 14, 15, 16, 18 and 20 clearly show that shortly after the death of the deceased, on their arrival at the spot, they noticed injury mark on the neck of the deceased and during then she was laying dead on the verandah. This finds corroboration from the evidence of the Doctor, P.W.9 and also the report that he has given vide Ext.4. The inquest report prepared by P.W.21 who has been admitted in evidence and marked Ext.1. The evidence of P.Ws. 2, 3 and 8 who are witnesses to the inquest also provide the proof in that regard. P.w.4 has stated that there were two ligature marks on the neck of the deceased and such injuries are ante-mortem in nature. The Doctor, P.W.9 having stated in clear terms that death was due to strangulation, for the purpose, he has relied upon the fracture of hyoid bone and the two

chambers of heart being empty which are suggestive of a homicidal death in negating the case that it was a case of suicide by hanging. Thus, when it has also been stated by the Investigating Officer, P.W.21 that on his arrival, the accused produced a saree before him and stated that his wife committed suicide by the same saree which has been seized under the seizure list, Ext.7. The accused however in his statement recorded under section-313 Cr.P.C. has expressed his total ignorance as to how his wife died and during then, he has taken a surprising plea that he had gone for work to another village wherefrom he came on getting the news and saw his wife lying dead on their verandah. In view of such evidence remaining unshaken in our view, the circumstance that the death was on account of strangulation not suicide has been established.

As already stated the evidence on record is quite clear, cogent, consistent and acceptable that the house of the accused was one roomed house and they two i.e. the accused and the deceased were residing together from the time of their marriage and no one else was either permanently or even temporarily then staying in the said house. In addition to this, we take note here that the accused during cross-examination having taken the plea as can be seen from the tenure of cross-examination that after taking bath, the deceased died of Sanipat

(extreme cold) and she collapsed later in his statement has expressed his total ignorance. The prosecution witness, P.W.16 has also stated that seeing their arrival, the accused was fleeing away from the house and on being asked, he told that his wife Sridevi died of Sanipat (extreme cold). Thus, it appears that the accused having initially taken the plea of suicide has then jumped over to take another plea that it was on account of Sanipat that the deceased collapsed and lastly he has expressed to have no such knowledge when through the evidence as already discussed the prosecution has established beyond reasonable doubt that the death was due to strangulation.

11. The evidence as obtained is clear that the death of the deceased had taken place in the one roomed house of the accused and it has been proved that it was on account of strangulation, when the evidence also firmly stand that the accused and deceased were then two who were living together in the house. With all these above, there comes absolutely no such explanation from the side of the accused in proving all those facts leading to the death of his wife which are within his special knowledge when he is obligated to do so as per the provision contained in section-106 of the Evidence Act. Thus, we find that the proven circumstances being joined together complete the chain in every respect which is inconsistent with the innocence of the accused

in ruling out all such hypothesis other than the guilt of the accused; we therefore of the view that the trial court has rightly held that the prosecution has established the charge under section-302 of the IPC against the accused that it is he who is the author of the crime, beyond reasonable doubt.

12. In the view of the matter, we are of the considered view that the trial court has rightly convicting the accused for commission of offence under section-302 of the IPC. Accordingly, we confirm the said judgment of conviction and order of sentence which have been impugned in this Appeal.

13. In the result, the Appeal stands dismissed.

**(D. Dash),
Judge.**

Dr.S.K. Panigrahi, J. I Agree.

**(Dr.S.K.Panigrahi),
Judge.**