

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRIMINAL APPEAL No.134 of 2019

(From the judgment dated 22nd February, 2019 passed by Shri Deepak Kumar, learned 2nd Addl. Sessions Judge, Berhampur in S.T. No.59 of 2013)

Pratap Acharya and another ***Appellants***

-versus-

State of Orissa ***Respondent***

Advocate(s) appeared in this case:-

For Appellants : Mrs. Bharati Dash, Advocate

For Respondent : Mrs. Saswata Pattanaik,
Additional Government Advocate
assisted by Mr. P.C. Das, A.S.C.

CORAM: JUSTICE B.P. ROUTRAY

JUDGMENT

20th April, 2022

B.P. Routray, J.

1. Both the Appellants, Pratap Acharya and Sashikala Acharya have been convicted for the offences under Sections 498-A/304-B read with Section 34 of the Indian Penal Code (“IPC”) and Section 4 of the Dowry Prohibition Act (“D.P. Act”).

Appellant No.1 is the husband of the deceased and Appellant No.2 is her mother-in-law.

2. Sulochana, the deceased married to Pratap Acharya on 16.5.2012. She died on 26.7.2012 as a result of hypovolemic shock arising out of burn injuries in the house of the Appellants. As per allegations, the Appellants killed the deceased in furtherance of demand of dowry for one gold chain and one electric inverter. The Appellants started torturing the deceased in demand of dowry after 10 days of the marriage.

3. The father (P.W.4) of the deceased is the informant. P.W.7 is the mother of the deceased. Prosecution examined total 19 witnesses. P.W. 6, 8, 12, 13, 14 & 15 have turned hostile and do not support prosecution case. Besides oral evidence, 12 documents including the FIR (Ext.2) have also been adduced by the prosecution.

Defence did not adduce evidence and their simple plea was, denial as well as false implication. Additionally, Appellant No.1-Pratap Acharya took the plea that he was not present in the house at the time of death of the deceased.

4. The status of the Appellants as husband and mother respectively, of the deceased is not disputed. The only question falls for determination is that, whether the deceased was subjected to cruelty by the Appellants in furtherance of demand of dowry and died, dowry death.

5. Since the relation of the Appellants with the deceased by marriage is not disputed, the remaining factors required to be examined are that, the nature of her death and the cruelty or harassment, if any, meted to her by the Appellants.

6. P.W.10 is the Medical Officer, who conducted the post mortem examination of the deceased. The PM report has been proved under Ext.7. As per opinion of P.W.10, the deceased died out of burn injuries which are ante mortem in nature and caused by application of dry heat/flame heat. Dry dark shoots were there in the inner section of trachea. This means, the deceased sustained burn injury while she was alive and so, considering the cause of death as hypovolemic shock arising out of burn injuries, it can safely be concluded that the deceased did not die a natural death, but an unnatural death. It needs to be stated here that the death may be natural or unnatural, and unnatural death may be accidental, homicidal or suicidal. As per the definition of “*dowry death*”, death of a woman by burns within 7 years of marriage comes within its sweep, provided other ingredients are fulfilled. The only exception is, such unnatural death is no-way related to cruelty or harassment to the woman by her husband or his relatives.

7. Now it is important to see if the deceased was subjected to cruelty or harassment by the Appellants. As stated earlier, the deceased died after two and half months of her marriage. P.Ws.2, 3, 4, 7 and 11 are the witnesses, who have deposed about the torture meted out on the deceased prior to her death. P.W.2 is the sister-in-law of the deceased (wife of brother of the deceased). P.W.3 is the sister of the deceased and P.W.11 is the husband of another sister of the deceased. They all have consistently deposed against the Appellants about the torture made on the deceased prior to her death. Their evidence in substance is to the effect that, on the date of marriage Rs.51,000/- and one gold ring along with other household articles were given in dowry. It is their

further evidence, specifically by P.Ws.4 and 11, that, after the marriage, the Appellants demanded gold chain from the occasion of Kothamadani and tortured her thereof for non-fulfillment of the same. On every such occasion when the father of the deceased visited her matrimonial house, the deceased was seen sad and unhappy.

8. The crucial question is that whether the deceased was subjected to such cruelty soon before her death. It is the evidence of P.W.7 that the deceased had revealed before her that unless such demand of gold chain is met with, she will be killed. It is well known that the term “soon before the death” is required to be considered in reference to specific circumstances of each case and no straight jacket formula can be laid down for fixing any such time limit. It has to be judged with the idea of proximity test. To see the existence of cruelty or harassment to the woman, the course of conduct persisting demand of dowry is to be seen, where there should be a proximate link between the effect of cruelty based on dowry demand and the consequential death.

9. In the instant case, the course of conduct of the Appellants from the occasion of Kothamadani till the death of the deceased for demand of gold chain as stated by the witnesses coupled with the presumption under Section 113-B of the Indian Evidence Act, clearly establishes the fact that the deceased was subjected to cruelty by the Appellants. The finding of the learned trial court to that effect relying on the evidence of P.W.2, 3, 4, 7 and 11 is based on reasons with logical conclusion.

10. The argument advanced on behalf of the Appellants that such witnesses being related to the deceased should not be relied without

any independent corroboration, has no substance in absence of any material contradiction or discrepancy touching their credibility. It is to be remembered here in an offence committed by close relatives within the four corners of the house, it is difficult to get corroboration from any independent witnesses. This is why the presumption under Section 113-B of the Indian Evidence Act is there. Thus the requirement with regard to demand of dowry and persistent cruelty subjected to the deceased till her death as revealing from the evidence of the witnesses are found satisfied within the term “soon before the death”.

11. One more fact seen in reply to the submission of Appellants with regard to credibility of those witnesses is that, none of such witnesses have whispered a single word against the father-in-law or elder brother-in-law of the deceased who reside in the same house during the occurrence. Had any tendency would be there with the witnesses of making sweeping allegations against the in-laws members, they could have easily implicated them also for the occurrence. But they did not do so. Therefore, the unsubstantiated contention raised against those witnesses to affect their credibility is rejected.

12. In the result the appeal being without merit is dismissed.

(B.P. Routray)
Judge

B.K. Barik/Secretary