

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLLP No.161 of 2015

State of Orissa

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Petitioner

Mrs. Saswata Pattnaik, AGA

-Versus-

Ashok Kumar Nandi & others

.....

Opp. Parties

CORAM:

**JUSTICE C.R. DASH
JUSTICE M.S. SAHOO**

**ORDER
21.03.2022**

Order No.

05.

1. This matter is taken up through Hybrid Arrangement (Virtual/Physical Mode).
2. Heard.
3. The present leave petition is directed against acquittal of the accused persons for the offence U/Ss. 498-A/304-B/34 IPC and Section- 4 of the D.P. Act.
4. Perused the impugned Judgment and the materials placed by Mrs. Saswata Pattnaik, learned Addl. Government Advocate.
5. Learned trial judge has thoroughly scanned the evidence of 11 witnesses examined during the trial besides the documents like inquest report and post mortem report.

6. Admittedly, the cause of death is asphyxia caused by hanging and the oblique mark of ligature around the neck of the deceased is suggestive of suicidal hanging.

7. From paragraph-16 of the impugned Judgment, it is found that, the prosecution has failed to establish any demand of dowry and any torture meted out to the deceased.

8. Mrs. Pattnaik, learned Addl. Government Advocate leans heavily on presumption under Sections 113-A and 113-B of the Indian Evidence Act, as the death of the deceased was caused under abnormal circumstance within seven years of her marriage. To raise a presumption, under the aforesaid sections of the Indian Evidence Act, some fundamental facts are required to be proved and those are *“demand of dowry for torture soon before the death of the deceased”*.

9. As found from the discussion in the impugned Judgment, the prosecution has miserably failed to prove such fundamental facts.

10. Mrs. Pattnaik, learned Addl. Government Advocate thereafter relies heavily on Section- 106 of the Evidence Act. But it is settled law that, Section- 106 of the Evidence Act cannot be pressed to the detriment of the accused persons entirely shifting the burden on them to clarify every latch in the prosecution.

10. Taking into consideration the entire evidence on record in their totality, we are not inclined to grant leave.

11. Accordingly, the prayer for leave is rejected and the CRLLP is dismissed.

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C.R. Dash, J.

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M.S. Sahoo, J.

Subha



