

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLLP No.91 of 2008

State Orissa

....

Petitioner

Mr. Janmejaya Katikia, AGA

-versus-

Ganeswar Nayak@ Tahia and others

....

Opposite Parties

Mr. Raghunath Das Mohapatra, Advocate

CORAM:

THE CHIEF JUSTICE

JUSTICE R. K. PATTANAİK

Order No.

ORDER
09.03.2022

08. 1. This petition by the State seeks leave to appeal against the Judgment dated 27th February 2007, passed by the 2nd Additional Sessions Judge, Cuttack in S.T. Case No.334 of 2005. By the impugned Judgment, the Trial Court acquitted Opposite Party Nos. 1 to 3 of the Offence under Section 498-A and 302 read with 34 of the Indian Penal Code (IPC) as well as Section 4 of the Dowry Prohibition Act (D.P. Act).
2. The case of the prosecution is Raghav Swain (PW-1), the brother of the deceased Asanti, who happened to be the wife of Opposite Party No.1 Ganeswar gave a complaint in which he stated that the marriage of his sister with Opposite Party No.1 was solemnized in the year 1995. PW-1 is said to have received an anonymous call on 3rd October, 2004 regarding his sister's death at her matrimonial home. He alleged that since cash and gold chain in the form of dowry were not given to them, the accused persons i.e., the husband Ganeswar, his brother Gayadhar (Opposite Party No.2) and

Gayadhar's wife Rohini (Opposite Party No.3) had tortured the deceased.

3. In the charge sheet submitted against the accused, it was alleged that the accused persons had killed the deceased by a lathi and dashing her head against the door in the morning hours of 3rd October, 2004. Eighteen witnesses were examined on behalf of the prosecution. The Trial Court found that the deceased had left her matrimonial home about eight months after the marriage on allegations of demands of dowry and torture. A criminal case bearing ICC Case No.145 of 2000 was initiated against them in the Court of the S.D.J.M. Khurda. After the S.D.J.M., Khurda sent the complaint petition to the Bolagarh Police, for registering an FIR, the Police submitted a charge sheet in G.R. Case No.740 of 2000. Meanwhile, the deceased initiated Criminal Case No.126 of 2000 claiming maintenance under Section 125 of CrPC. Both cases ended in a compromise recorded on 16th April, 2004 pursuant to which the deceased went back to the matrimonial home to live with her husband.

4. The Trial Court found that the evidence of PW-2, another brother of the deceased, regarding the deceased having told PW-1 and her mother when they visited the matrimonial home, of the torture by the accused persons, was hearsay. Also, the mother of PW-1 was not examined to corroborate this fact. Also, in the FIR lodged on 3rd October 2004, this material fact had been omitted. Further, three other prosecution witnesses i.e., PWs-8, 9 and 10 did not speak of the deceased being subject to torture after she returned to her matrimonial home. Consequently, the Trial Court held that the prosecution had failed to prove the charge under Section 498-A of

IPC against the accused persons. Also, with the earlier case on the same accusation, having been compromised, the Trial Court was of the view that under Section 300 CrPC, a second trial for the same offence under Section 498-A IPC was not legally sustainable.

5. The Trial Court came to the conclusion that the death of Asanti was homicidal. It noted that the three witnesses PWs-4, 5 and 7 who spoke of having seen the Opposite Party No.1 pressing the neck of the deceased with a lathi with the Opposite Party No.3 holding her legs and Opposite Party No.2 also holding a lathi had not made any previous statement to the Investigating Officer (IO). Their assertion to the contrary during the cross-examination raised grave doubts on the truthfulness of their testimony. The behaviour of PWs. 4, 5 and 7 in not trying to prevent the accused persons and simply returning to their houses was found to be unnatural, particularly since none of the accused persons are said to have threatened PWs.4, 5 and 7. As regards, the blood-stained earth, the lathi and the Lungi that were seized, it was noted by the trial Court that while human blood was found in them, the grouping the blood was not confirmed. Importantly, no blood was found in the nail clippings of Opposite Party No.1. Consequently, it was concluded that the seizure of the articles themselves not sufficient to prove the important links in the chain of circumstances.

6. The IO's cross-examination further revealed that the Opposite Party No.1 had three brothers and each of them was living in separate houses. Consequently, it was concluded that the Opposite Parties 2 and 3 were not involved in the death of the deceased. As far as the Opposite Party No.1 is concerned, merely because she

was found dead in the matrimonial home it could not lead to the conclusion that he was the author of the crime.

7. In the above background with the links in the chain of circumstances not being conclusively established, the trial Court granted the accused on the benefit of doubt.

8. Having heard Mr. Janmejaya Katikia, learned Additional Government Advocate, the Court is of the view that the conclusion reached by the trial Court was probable on an appreciation of the evidence laid before it. Important links in the chain of circumstances were not able to be conclusively established by the prosecution by leading credible evidence. The untrustworthiness of key prosecution witnesses like PWs.4, 5 and 7 indeed raised grave doubts on the veracity of the version of the prosecution.

9. The Court, therefore, declines to grant leave to the State to appeal against the impugned order. The petition is accordingly dismissed.

(Dr. S. Muralidhar)
Chief Justice

(R. K. Pattanaik)
Judge

S. Behera