Signature Not Verified
Digitally Signed
Signed by: SIPUN BEHERA
Designation: Junior Stenographer
Reason: Authentication
Location: HIGH COURT OF ORISSA, CUTTACK
Date: 31-Jul-2023 10:46:05

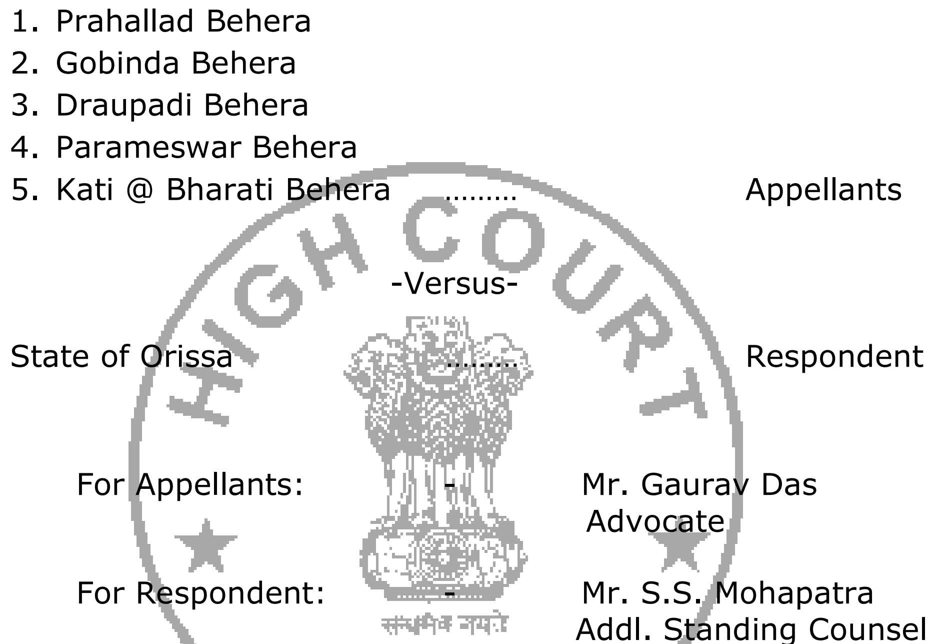
IN THE HIGH COURT OF ORISSA, CUTTACK

CRLA NO.137 OF 2003

From the judgment and order dated 14th May 2003 passed by the Addl. Sessions Judge, Fast Track Court, Baripada in S.T. Case No.50/214 of 2002.

----

1. Prahallad Behera
2. Gobinda Behera
3. Draupadi Behera
4. Parameswar Behera
5. Kati @ Bharati Behera .... Appellants



-Versus-

State of Orissa .... Respondent

For Appellants: - Mr. Gaurav Das
Advocate

For Respondent: - Mr. S.S. Mohapatra
Addl. Standing Counsel

P R E S E N T:-

THE HONOURABLE MR. JUSTICE S.K. SAHOO

Date of Hearing and Judgment: 20.07.2023

S.K. SAHOO, J. The appellant no.1 Prahallad Behera is the husband, appellant no.2 Gobinda Behera is the elder brother in-law (husband's elder brother), appellant no.3 Draupadi Behera is the mother-in-law, appellant no.4 Parameswar Behera is the uncle-

Signature Not Verified
Digitally Signed
Signed by: SIPUN BEHERA
Designation: Junior Stenographer
Reason: Authentication
Location: HIGH COURT OF ORISSA, CUTTACK
Date: 31-Jul-2023 10:46:05

in-law and appellant no.5 Kati @ Bharati Behera is the aunt-in-law of Laxmipriya Behera (hereafter 'the deceased') respectively. All the appellants faced trial in the Court of learned Additional Sessions Judge (F.T.C.), Baripada in S.T. Case No.50/214 of 2002 for offences punishable under sections 498-A/304-B/34 of the Indian Penal Code on the accusation that appellant no.1 being the husband and other appellants being the relatives of her husband, subjected her to cruelty by willful conduct which was of such a nature as was likely to drive the deceased to commit suicide by demanding more dowry and that the cause of death of the deceased was on account of burn injuries within seven years of marriage and that the deceased was subjected to cruelty by them in connection with demand for dowry in furtherance of their common intention.

The learned trial Court vide impugned judgment and order dated 14th May 2003 held that the prosecution has failed to establish the charge under section 304-B of the Indian Penal Code, however, it found all the appellants guilty under sections 498-A/306 of the Indian Penal Code and sentenced each of them to undergo R.I. for a period of two years and to pay a fine of Rs.5,000/- (rupees five thousand), in default, to undergo R.I. for a further period of six months each for the offence under section 498-A of the I.P.C. and to undergo R.I. for a period of five years

HIGH COURT ORISSA

Signature Not Verified
Digitally Signed
Signed by: SIPUN BEHERA
Designation: Junior Stenographer
Reason: Authentication
Location: HIGH COURT OF ORISSA, CUTTACK
Date: 31-Jul-2023 10:46:05

each and to pay a fine of Rs.5,000/- (rupees five thousand) each, in default, to undergo R.I. for a further period of six months each for the offence under section 306 of the Indian Penal Code and the both the substantive sentences were directed to run concurrently.

2. The prosecution case, as per the first information report presented by Markand Behera (P.W.3), the father of the deceased Laxmipriya Behera before Inspector-in-charge, Baripada Town police station on 22.04.2000 is that the deceased was his third daughter and she had married to the appellant no.1 on 13.10.1999 in Khirachora Gopinath Temple, Remuna. There was a demand of Rs.70,000/- (rupees seventy thousand) towards dowry from the side of the bridegroom and the appellant no.4 was the mediator in the marriage. It is the further prosecution case as per the F.I.R. that on account of non-fulfillment of some dowry articles, particularly, gold ornaments, the deceased was subjected to physical and mental cruelty by the appellants. It is the further prosecution case as per the F.I.R. that on 21.04.2000 at about 8.00 a.m., the deceased informed her father (P.W.3) that her life was in danger and requested her father to take her back. Immediately, P.W.3 and his nephew Nakula Chandra Behera (P.W.7) came to the in-laws' house of the deceased and there, they found that the deceased

HIGH COURT ORISSA

Signature Not Verified
Digitally Signed
Signed by: SIPUN BEHERA
Designation: Junior Stenographer
Reason: Authentication
Location: HIGH COURT OF ORISSA, CUTTACK
Date: 31-Jul-2023 10:46:05

had been assaulted and her bangles being broken and there was no vermilion on her forehead. When they asked the deceased about her condition, she told that since the further demand of dowry could not be fulfilled, she had been assaulted by the appellants. Looking at the condition of the deceased, when P.W.3 and P.W.7 wanted to take the deceased with them, the appellant no.2 and appellant no.4 assured them that they would leave the deceased Laxmipriya at her father's house on 22.04.2000. Accordingly, P.W.3 and P.W.7 returned back home but in the evening hours at about 7.00 p.m., a message came from an unknown telephone number that the deceased had sustained burn injuries and was hospitalized. Immediately, the informant (P.W.3) rushed to Baripada Government Hospital where he found that the deceased had sustained 60 to 70 per cent burn injuries. When the deceased was asked about the cause of burn injuries, she disclosed that the appellants poured kerosene on her body and set her on fire by using a matchstick. The deceased was immediately shifted to Tata Hospital by an ambulance where she was fighting with death and it is further stated that the in-laws' family members of the deceased had not even come to see her. Therefore, suspecting it to be a pre-planned attempt to kill the deceased on account of non-fulfillment of the dowry demand, the F.I.R. was lodged.

HIGH COURT
ORISSA

Signature Not Verified
Digitally Signed
Signed by: SIPUN BEHERA
Designation: Junior Stenographer
Reason: Authentication
Location: HIGH COURT OF ORISSA, CUTTACK
Date: 31-Jul-2023 10:46:05

3. On receipt of F.I.R., Inspector in-charge of Baripada Town police station registered a case under sections 498-A/307/34 of the Indian Penal Code read with section 4 of the Dowry Prohibition Act against all the five appellants and directed P.W.8 Smt. Snigdha Bhanj to investigate the case. P.W.8 during course of investigation, examined the informant, other witnesses, issued requisition to S.D.M., Baripada for deputation of an Executive Magistrate to record the dying declaration. She further issued requisition to D.F.S.L. for deputation of scientific team for inspection of the spot. She further visited the spot and prepared the spot map vide Ext.12. She effected seizure of one tin daba, containing little amount of kerosene, one burnt match stick, half burnt wearing apparels of the victim, one imitation necklace from the spot and prepared the seizure list vide Ext.13. Further she seized a receipt and other documents granted by the authorities of Lord Khirachora Gopinath Temple, Remuna relating to performance of marriage in the temple premises vide Ext.3 and those documents were given in zima of the informant by executing zimanama vide Ext.5. P.W.4 Baidyanath Kar, who was working as Executive Magistrate -cum- Tahasildar, Baripada on 21.04.2000, as per the direction of S.D.M, Baripada, recorded the dying declaration of the deceased which has been marked as Ext.7 and sent the same to P.W.8.

Signature Not Verified
Digitally Signed
Signed by: SIPUN BEHERA
Designation: Junior Stenographer
Reason: Authentication
Location: HIGH COURT OF ORISSA, CUTTACK
Date: 31-Jul-2023 10:46:05

On 27.04.2000, the I.O. arrested the appellants and they were forwarded to Court on 28.04.2000. She also seized the dowry articles as per the seizure list vide Ext.4 and gave the same in zima of the informant as per zimanama vide Ext.6. The deceased died on 26.04.2000 and inquest was held and the post mortem was conducted vide Ext.10 which indicates that the burn injuries were ante mortem in nature and death was due to septicemia and toxemia of burn. P.W.8 handed over the charge of investigation to P.W.9 who examined some witnesses, seized the bed-head ticket on 21.07.2001 from D.H.H., Baripada vide seizure list (Ext.14). He also seized one handwritten plain paper letter and seven sheets of admitted handwriting of the deceased on production by the informant (P.W.3) under seizure list Ext.1. On 01.08.2001, he seized the requisition of the I.I.C., Baripada Town P.S. for recording dying declaration of the deceased, made a query to the doctor in connection with the injury sustained by the appellant no.1. The plain paper letter and the admitted handwriting were sent to S.F.S.L. for comparison along with the seized articles and received the report of the chemical examiner and on completion of investigation, he submitted chargesheet under sections 498-A/304-B/306/34 of the Indian Penal Code and section 4 of the Dowry Prohibition Act on 03.08.2001.

HIGH COURT ORISSA

Signature Not Verified
Digitally Signed
Signed by: SIPUN BEHERA
Designation: Junior Stenographer
Reason: Authentication
Location: HIGH COURT OF ORISSA, CUTTACK
Date: 31-Jul-2023 10:46:05

4. After submission of charge-sheet, charge was framed by the learned trial Court on 20th December 2002 under sections 498-A/304-B/34 of the Indian Penal Code and since the appellants refuted the charge, pleaded not guilty and claimed to be tried, the sessions trial procedure was resorted to prosecute them and establish their guilt.

5. During course of trial, in order to prove its case, the prosecution examined as many as nine witnesses.

P.W.1 Sudhansu Kumar Giri, who is a co-villager of the informant (P.W.3) stated to have heard complain from the deceased regarding ill-treatment on her for non-giving of dowry articles during course of his visit to the house of the appellants.

P.W.2 Radhagobinda Behera, who is the brother of the deceased stated about the demand of dowry by the appellants and also stated that the victim succumbed to burn injury on 26.04.2000.

P.W.3 Markanda Behera, is the father of the deceased and he is the informant in this case and he stated about the demand of dowry and torture on the deceased due to non-fulfillment of demand of dowry and further stated that the appellants poured kerosene on her body and set her on fire.

P.W.4. Baidyanath Kar, who was the Executive Magistrate -cum- Tahasildar, Baripada stated that as per the

HIGH COURT ORISSA

Signature Not Verified
Digitally Signed
Signed by: SIPUN BEHERA
Designation: Junior Stenographer
Reason: Authentication
Location: HIGH COURT OF ORISSA, CUTTACK
Date: 31-Jul-2023 10:46:05

direction of S.D.M., Baripada, he recorded the dying declaration of the deceased.

P.W.5 Dr. Sanjibani Agarwalla, who was the Gynecology Specialist attached to District Headquarters Hospital, Baripada intimated the I.I.C., Baripada Town P.S. about the admission of the deceased into hospital vide Ext.8.

P.W.6 Dr. Bhupati Bhusan Das, who was the Asst. Surgeon, attached to District Headquarters Hospital, Baripada examined appellant no.1 on police requisition and prepared the injury report vide Ext.9.

P.W.7 Nakula Chandra Behera, who is the nephew of the informant, stated that he had accompanied the informant (P.W.3) to the house of the appellants on receipt of information from the deceased about the ill-treatment.

P.W.8 Smt. Snigdha Bhanja, who was the initial Investigating Officer of the case, stated that as per the direction of the I.I.C., Baripada Town P.S., she took up investigation of the case and thereafter handed over the charge of Investigation to the I.I.C., Baripada P.S. and subsequently Mr. Nityananda Buda took up the investigation of the case.

P.W.9 Mr. Nityananda Buda is the Investigating Officer of the case who placed charge sheet.

HIGH COURT ORISSA

Signature Not Verified
Digitally Signed
Signed by: SIPUN BEHERA
Designation: Junior Stenographer
Reason: Authentication
Location: HIGH COURT OF ORISSA, CUTTACK
Date: 31-Jul-2023 10:46:05

One witness, namely, Amar Chandra Behera examined as D.W.1.

The prosecution exhibited nineteen documents. Ext.1 is the seizure list, Ext.2 is the written report, Ext.3 is the seizure list, Ext.4 is the seizure list, Ext.5 & Ext.6 are the zimanamas, Ext.7 is the dying declaration sheet of the deceased, Ext.8 is the report of P.W.5, Ext.9 is the injury report, Ext.10 is the P.M. report, Ext.11 is the requisition for recording dying declaration, Ext.12 is the spot map, Ext.13 is the seizure list, Ext.14 is seizure list, Ext.15 is the seizure list, Ext.16 is the query requisition, Ext.17 is also the query requisition, Ext.18 is the forwarding report and Ext.19 is the C.E. report.

No document has been marked on behalf of defence.

6. The defence plea of the appellant was one of denial and it was pleaded by appellant no.1 Prahallad Behera that the deceased had illicit relationship with one Siba Behera and on 21.04.2000, he caught hold both of them in a compromising position for which she committed suicide.

7. The learned trial Court after assessing oral as well as documentary evidence available on record came to hold that in view of the dying declaration marked as Ext.7, the immediate cause for her setting on fire was not due to any ill-treatment relating to demand of dowry in connection with marriage and

HIGH COURT ORISSA

Signature Not Verified
Digitally Signed
Signed by: SIPUN BEHERA
Designation: Junior Stenographer
Reason: Authentication
Location: HIGH COURT OF ORISSA, CUTTACK
Date: 31-Jul-2023 10:46:05

there was no such disclosure made by the deceased before P.W.3 with regard to ill-treatment meted out to her concerning dowry articles prior to her setting on fire. Relying on the oral evidence, it was further held that the deceased was never ill-treated on the ground of non-fulfilment of the dowry articles and there is no positive evidence that the deceased Laxmipriya took the extreme step of burning her body by pouring kerosene due to torture and for not fulfilling the demand of dowry articles. Accordingly, the learned trial Court held that the prosecution has failed to establish the ingredients of offence under section 304-B of the Indian Penal Code. However, the learned trial Court held that on analysis of the entire evidence on record and having regard for the previous attending and subsequent conduct of the appellants that the appellants wanted the deceased to end her life and thus, the appellant no.3 and appellant no.5 used foul language against her character on 21.04.2000 morning and since the deceased was labelled as a woman of loose character, that caused provocation and therefore, the deceased took the extreme step to end her life. Hence, it was held that the ingredients of the offence under section 306 of the Indian Penal Code are proved against the appellants. Further the learned trial Court held that the prosecution has successfully established the

HIGH COURT
ORISSA

Signature Not Verified
Digitally Signed
Signed by: SIPUN BEHERA
Designation: Junior Stenographer
Reason: Authentication
Location: HIGH COURT OF ORISSA, CUTTACK
Date: 31-Jul-2023 10:46:05

charge under section 498-A of the Indian Penal Code against all the appellants.

8. Mr. Gaurav Das, learned counsel appearing for the appellants contended that in absence of charge framed against the appellants under section 306 of the Indian Penal Code, their conviction under such offence is legally impermissible. The dying declaration recorded by the Executive Magistrate, Baripada (P.W.4) is totally silent about any role played by the male appellants i.e. appellant no.1, appellant no.2 and appellant no.4. Only thing that has been stated in the dying declaration was that the two lady appellants i.e. appellant no.3 and appellant no.5 were abusing the deceased since morning and that was also not proved to be in connection with demand of dowry and P.W.4 specifically stated that when he asked the deceased about the reason for the abuse, she did not disclose the reasons. Therefore, in view of such dying declaration recorded by P.W.4, the Court held that it cannot be said that there was any proximate link between the conduct of the two lady appellants i.e. appellant no.3 and appellant no.5 with the commission of suicide of the deceased and as such, the ingredients of the offence under section 306 of the Indian penal Code are not attributed.

HIGH COURT ORISSA

Signature Not Verified
Digitally Signed
Signed by: SIPUN BEHERA
Designation: Junior Stenographer
Reason: Authentication
Location: HIGH COURT OF ORISSA, CUTTACK
Date: 31-Jul-2023 10:46:05

Learned counsel further argued that the evidence relating to cruelty on the deceased to sustain charge under section 498-A of the Indian Penal Code is discrepant in nature and though it is the prosecution case that one letter was written by the deceased few days prior to her death which compelled her father (P.W.3) and a co-villager (P.W.1) to visit the house of the appellants and the said letter was also seized during course of investigation and it was sent to S.F.S.L. for examination with the admitted handwriting of the deceased but neither the report of the Scientific Officer nor that letter was proved during trial. Therefore, the prosecution has withheld a very vital document from the Court for which adverse inference should be drawn. Learned counsel further submitted that there is lack of evidence on record that the conduct of the appellants was of such a nature as was likely to drive the deceased to commit suicide or to cause grave injury or danger to her life, limb or health (whether mental or physical) and since the learned trial Court has held that the prosecution has failed to establish demand of dowry, the charge under section 498-A of the Indian Penal Code is also not established and it a fit case where the appellants should be extended the benefit of doubt.

9. Mr. S.S. Mohapatra, learned Additional Standing Counsel, on the other hand, supported the impugned judgment

Signature Not Verified
Digitally Signed
Signed by: SIPUN BEHERA
Designation: Junior Stenographer
Reason: Authentication
Location: HIGH COURT OF ORISSA, CUTTACK
Date: 31-Jul-2023 10:46:05

and submitted that even though charge was not framed against the appellants under section 306 of the Indian Penal Code, but they were charged under a higher offence like 304-B of the Indian Penal Code and also under section 498-A of the Indian Penal Code and they were aware of the ingredients of the offence under section 306 of the Indian Penal Code and thus it cannot be said that there was any failure of justice occasioned thereby for non-framing of such charge. He argued that the marriage of the deceased with the appellant no.1 was held on 13.10.1999 and it appears from the evidence on record that she was two months pregnant as on the date of occurrence i.e. 21.04.2000. He asserted that if everything was well, then there was no earthly reason for the deceased to commit suicide and that to by pouring kerosene on her and setting herself on fire which resulted in her death. Learned counsel further submitted that even though in the recorded dying declaration, the deceased has not attributed any overt act against the male appellants, i.e. appellant no.1, appellant no.2 and appellant no.4, but the father of the deceased being examined as P.W.3 stated that in the hospital, when he tried to ascertain the cause of burn injury from the deceased, she implicated all the appellants in that regard.

Learned counsel further submitted that even though there are some discrepancies in the evidence of the witnesses

Signature Not Verified
Digitally Signed
Signed by: SIPUN BEHERA
Designation: Junior Stenographer
Reason: Authentication
Location: HIGH COURT OF ORISSA, CUTTACK
Date: 31-Jul-2023 10:46:05

but those are not of such a magnitude to discard and disbelieve the entire prosecution case relating to the cruelty on the deceased and therefore, the learned trial Court has rightly found the appellants guilty under sections 498-A/306 of the Indian Penal Code.

Section 306 of the Indian Penal Code:

10. Adverting to the contentions raised by the learned counsel for the respective parties, let me first deal with the conviction of the appellants under section 306 of the Indian Penal Code which prescribes punishment for 'abetment of suicide'. It is not in dispute that no charge under section 306 of the Indian Penal Code was framed against the appellants rather they were charged under section 304-B of the Indian Penal Code. Learned trial Court while acquitting the appellants of the charge under section 304-B of the Indian Penal Code, convicted them under section 306 of the Indian Penal Code. In view of section 464 of Cr.P.C., it is possible for the appellate or revisional Court to convict an accused for an offence for which no charge was framed unless the Court is of the opinion that a failure of justice would in fact occasion. In order to judge whether a failure of justice has been occasioned, it will be relevant to examine whether the accused was aware of the basic ingredients of the offence for which he is being convicted and

Signature Not Verified
Digitally Signed
Signed by: SIPUN BEHERA
Designation: Junior Stenographer
Reason: Authentication
Location: HIGH COURT OF ORISSA, CUTTACK
Date: 31-Jul-2023 10:46:05

whether the main facts sought to be established against him were explained to him clearly and whether he got a fair chance to defend himself. (Ref: **Dalbir Singh -Vrs.- State of U.P. : (2004) 5 Supreme Court Cases 334**). In the case in hand, the appellants were charged under section 304-B of I.P.C. and they clearly understood the nature of offence and case was clearly explained to them and they have been afforded fair opportunity of defending themselves, ensuring substantial compliance of provisions of law. In such facts and circumstances, in view of section 464 of Cr.P.C., it is possible for Court to convict the appellants for offence for which no charge was framed unless the Court is of the opinion that failure of justice would in fact occasion. When from statement of charge framed under section 304-B IPC and section 498-A of I.P.C., it is clear that all facts and ingredients for framing charge for offence under section 306 of I.P.C. existed in the case, the mere omission on the part of the trial Judge to mention of section 306 of I.P.C. does not preclude the Court from convicting the appellants for the said offence when found proved. In the case of **Ramesh Vithal Patil -Vrs.- State of Karnataka and others reported in (2014) 11 Supreme Court Cases 516**, it has been held as follows:-

> "18. It is true that the appellant was not charged under Section 306 IPC. The charge was under

HIGH COURT ORISSA

Signature Not Verified
Digitally Signed
Signed by: SIPUN BEHERA
Designation: Junior Stenographer
Reason: Authentication
Location: HIGH COURT OF ORISSA, CUTTACK
Date: 31-Jul-2023 10:46:05

Section 304-B IPC. It was, however, perfectly legal for the High Court to convict him for offence punishable under Section 306 IPC. In this connection, we may usefully refer to **Narwinder Singh : (2011) 2 Supreme Court Cases 47**. In that case, the accused was charged under Section 304-B IPC. The death had occurred within seven years of the marriage. The trial court convicted the accused for an offence punishable under Section 304-B IPC. Upon reconsideration of the entire evidence, the High Court came to the conclusion that the deceased had not committed suicide on account of demand for dowry, but, due to harassment caused by the husband in particular. The High Court acquitted the parents of the accused and converted the conviction of the accused from one under Section 304-B IPC to Section 306 IPC. This Court dismissed the appeal filed by the accused. It was observed that it is a settled proposition of law that mere omission or defect in framing charge would not disable the court from convicting the accused for the offence which has been found to be proved on the basis of the evidence on record. In such circumstances, the matter would fall within the purview of Sections 221(1) and (2) of the Code of Criminal Procedure, 1973."

HIGH COURT ORISSA

Signature Not Verified
Digitally Signed
Signed by: SIPUN BEHERA
Designation: Junior Stenographer
Reason: Authentication
Location: HIGH COURT OF ORISSA, CUTTACK
Date: 31-Jul-2023 10:46:05

The learned trial Court while considering the point as to whether on 21.04.2000, the deceased committed suicide by pouring kerosene on her body and setting her ablaze came to hold that the marriage of the deceased with the appellant no.1 was held on 13.10.1999 and the deceased died on 26.04.2000 i.e. within six and half months of her marriage and she poured kerosene on her body and setting her ablaze in her matrimonial home on 21.04.2000. On 26.04.2000, she succumbed to burn injures while undergoing treatment at Tata Hospital. The post mortem report, which has been marked as Ext.10, discloses the reason of her death as septicemia and toxemia causing out of burn injuries. Therefore, it was held that the deceased committed suicide within seven months of her marriage. Neither the learned counsel for the appellants nor the learned counsel for the State challenged such finding of the learned trial Court. In view of the evidence on record, particularly, the P.M. report (Ext.10) and reply to the query made by the I.O. (P.W.9) to the A.D.M.O. vide Ext.17 that the injuries found on the victim might be due to suicidal attempt by pouring kerosene on herself and setting her on fire, I am of the humble view that the prosecution has proved that the deceased committed suicide and she died on account of burn injuries.

Signature Not Verified
Digitally Signed
Signed by: SIPUN BEHERA
Designation: Junior Stenographer
Reason: Authentication
Location: HIGH COURT OF ORISSA, CUTTACK
Date: 31-Jul-2023 10:46:05

11. Dying declaration of the deceased has been recorded by none else than P.W.4, the Executive Magistrate -cum- Tahasildar, Baripada on 21.04.2000 as per the direction of the S.D.M., Baripada. He stated that he found the deceased was admitted in the female surgical ward and the entire body had been burnt and she was not in a condition to make any statement. However, he put some questions to the deceased to which she stated that she set her ablaze by pouring kerosene on her body. She also disclosed that her mother in-law (appellant no.3) and aunt-in-law (appellant no.5) were scolding her since morning and at about 8.00 p.m., she burnt herself. She further stated that her husband (appellant no.1) and father-in-law had not scolded her and that her marriage was performed seven months back and she was carrying two months pregnancy. She further stated that no one told with regard to dowry articles, except scolding her. P.W.4 further stated that the deceased was not in a normal state of mind at the time of her statement and no medical officer was present at the time of recording of dying declaration. When he asked the deceased about the reason for the abuse meted out to her, she did not disclose the reasons. The dying declaration has been marked as Ext.7.

Law is well settled that a dying declaration is an important piece of evidence which, if found veracious and

HIGH COURT ORISSA

Signature Not Verified
Digitally Signed
Signed by: SIPUN BEHERA
Designation: Junior Stenographer
Reason: Authentication
Location: HIGH COURT OF ORISSA, CUTTACK
Date: 31-Jul-2023 10:46:05

voluntary and appears to the Court to have made in a fit mental condition could be the sole basis for conviction and it can be relied upon even without seeking for any further corroboration. In this context, it is pertinent to reproduce the following observations made by the Hon'ble Supreme Court in **Suresh Chandra Jana -Vrs.- State of West Bengal & Ors., reported in (2017) 16 Supreme Court Case 466**:

> "It would not be out of place to discuss the importance of dying declaration under Section 32 of the Indian Evidence Act. The principle underlying Section 32 of the Indian Evidence Act is 'Nemo moriturus praesumitur mentire' i.e., man will not meet his maker with a lie in his mouth. Dying declaration is one of the exceptions to the rule of hearsay. It is well settled that there is no absolute rule of law 'that the dying declaration cannot form the sole basis of conviction unless it is corroborated'. The rule requiring corroboration is merely a rule of prudence [*refer* ***Paniben (Smt.) v. State of Gujarat***, **(1992) 2 SCC 474**; ***Munnu Raja and Anr. v. State of Madhya Pradesh***, **(1976) 3 SCC 104**; ***State of U.P. v. Ram Sagar Yadav and Ors.***, **(1985) 1 SCC 552**; ***Ramawati Devi v. State of Bihar***, **(1983) 1 SCC 211].**"

Notwithstanding the aforesaid position of law, while admitting a dying declaration, the Court must be vigilant towards

Signature Not Verified
Digitally Signed
Signed by: SIPUN BEHERA
Designation: Junior Stenographer
Reason: Authentication
Location: HIGH COURT OF ORISSA, CUTTACK
Date: 31-Jul-2023 10:46:05

the need for 'Compos Mentis Certificate' from a doctor and it must satisfy itself of the absence of any kind of tutoring. [Ref: **Mukesh & another -Vrs.- State for N.C.T. of Delhi & others, reported in (2017) 6 Supreme Court Cases 1**].

In case of **Laxman -Vrs.- State of Maharashtra reported in (2002) 6 Supreme Court Cases 710**, it was held that what is essentially required is that the person who records a dying declaration must be satisfied that the deceased was in a fit state of mind. Where it is proved by the testimony of the Magistrate that the declarant was fit to make the statement, even without examination by the doctor, the declaration can be acted upon provided the Court ultimately holds the same to be voluntary and truthful.

In the case at hand, P.W.4 has stated that the deceased was not in a condition to make any statement. He further stated that he had put several other questions to the deceased, but she did not give any answer and she complained that since she was having severe burning sensation, she was not prepared to make any other statement. P.W.4 further stated that the deceased was not in a normal state of mind at the time of making her statement and no medical officer was present at the time of recording of the declaration. Though, the learned defence counsel had suggested to the doctor that the deceased was in a

HIGH COURT ORISSA

Signature Not Verified
Digitally Signed
Signed by: SIPUN BEHERA
Designation: Junior Stenographer
Reason: Authentication
Location: HIGH COURT OF ORISSA, CUTTACK
Date: 31-Jul-2023 10:46:05

fit and proper state of mind to make the statement, the doctor denied the same. However, the learned trial Court held that the deceased had sustained 50% burn injuries and she had also signed the dying declaration rising from the bed and therefore, it must be held that she was conscious and in a fit state of mind to make the dying declaration and accordingly, reliance was placed on the dying declaration. P.W.4 admits in his cross-examination that he had not mentioned in his report that the deceased did not like to make any other statement to his questions as she was having severe burning sensation and he has also not mentioned in his report that the deceased was not in normal state of mind at the time of making statement. He further stated that the deceased had signed by rising from the bed.

From the plain reading of dying declaration (Ext.7), it appears that the deceased had stated her name and further stated that she set herself ablaze by pouring kerosene on her body as appellant no.3 and appellant no.5, the two lady accused scolded her. She further stated that her marriage had taken place seven months back and since last two months, she was pregnant. She further stated that she was only abused but nobody told her about dowry. It further appears that after recording of the dying declaration in presence of the parties, P.W.4 read over and explained to the deceased about its

Signature Not Verified
Digitally Signed
Signed by: SIPUN BEHERA
Designation: Junior Stenographer
Reason: Authentication
Location: HIGH COURT OF ORISSA, CUTTACK
Date: 31-Jul-2023 10:46:05

contents and she admitted to be correct and accordingly, put her signature which has been marked as Ext.7/2. The signature of P.W.4 has also been marked as Ext.7/1. In view of the materials available on record and the manner in which the dying declaration was recorded and it was read over and explained to the deceased to which she put her signature, I am of the humble view that the learned trial Court has rightly placed reliance on the dying declaration. In the dying declaration, there is nothing against the appellant no.1, appellant no.2 and appellant no.4. Only it is stated that the two female appellants i.e. appellant no.3 and appellant no.5 were scolding the deceased since morning but the deceased had not stated about the reason of such scolding.

P.W.3, the father of the deceased so also the informant of the case has stated that in the Tata Hospital, when he enquired from the deceased about the cause of her suffering, she revealed that she set herself on fire by pouring kerosene on her body as she could not tolerate the ill-treatment made by the appellants and thereafter, he lodged the F.I.R. In the F.I.R., the informant has not mentioned anything regarding the dying declaration stated to have been made by the deceased. Therefore, no importance can be attached to the so-called "dying declaration" made before P.W.4. I am of the humble view that

HIGH COURT ORISSA

Signature Not Verified
Digitally Signed
Signed by: SIPUN BEHERA
Designation: Junior Stenographer
Reason: Authentication
Location: HIGH COURT OF ORISSA, CUTTACK
Date: 31-Jul-2023 10:46:05

the deceased committed suicide by setting herself ablaze due to scolding of the two lady appellants.

12. Now, the question crops up for consideration as to whether there are sufficient materials on record to show that the appellants abated the commission of suicide of the deceased.

Law is well settled that an offence under section 306 of the Indian Penal Code would stand only if there is an abetment for commission of suicide. Section 107 of the Indian Penal Code states that a person can be stated to have abated the doing of a thing, if he instigates any person to do that thing or engages with one or other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of such conspiracy, or the person intentionally aids, by any act or illegal omission, the doing of that thing. The abetment of suicide involves a mental process of instigating a person or intentionally aiding that person in doing of a thing. In cases of conspiracy also it would involve that mental process of entering into conspiracy for the doing of that thing. More active role which can be described as instigating or aiding the doing of a thing is required before a person can be said to be abetting the commission of offence under section 306 of the Indian Penal Code. Merely because a married woman committed suicide within seven years of her marriage in her in-

Signature Not Verified
Digitally Signed
Signed by: SIPUN BEHERA
Designation: Junior Stenographer
Reason: Authentication
Location: HIGH COURT OF ORISSA, CUTTACK
Date: 31-Jul-2023 10:46:05

laws' house does not *ipso facto* result in the presumption of abetment of suicide by her husband or his relatives.

In case of **M. Mohan -Vrs.- State represented by the Deputy Superintendent of Police reported in (2011) 48 Orissa Criminal Reports (SC) 961**, it is held as follows:-

> "45. Abetment involves a mental process of instigating a person or intentionally aiding a person in doing of a thing. Without a positive act on the part of the accused to instigate or aid in committing suicide, conviction cannot be sustained."

The intention of the legislature is clear that in order to convict the persons under section 306 of the Indian Penal Code, the clear *mens rea* to instigate a person to commit suicide must exist. It also requires active or direct act which led the deceased to commit suicide seeing no other option and this act must have been intended to push the deceased into such a position that he/she committed suicide. Where the accused, by his continuous course of conduct, creates circumstances under which the deceased was left with no other option than to commit suicide, the instigation or intentional aiding may be inferred. It is not enough, if the acts of the accused caused persuasion in the mind of the deceased to commit suicide. In some cases, there may be several reasons for creating great disturbance to the

Signature Not Verified
Digitally Signed
Signed by: SIPUN BEHERA
Designation: Junior Stenographer
Reason: Authentication
Location: HIGH COURT OF ORISSA, CUTTACK
Date: 31-Jul-2023 10:46:05

psychology of the deceased which resulted in the commission of suicide. One of such reason may be due to some overt act committed by the accused at some point of time but unless there is proximity and nexus between the conduct or behavior of the accused with that of suicide committed by the deceased, it would not be proper to convict an accused under section 306 of the Indian Penal Code.

In order to ascertain the proximate link, if any, between the conduct of the appellants and suicide of the deceased, let me now examine the evidence on record. P.W.3, the informant has stated that ten to twelve days prior to the death of the deceased, he got a letter from her daughter through a female which was seized by the police on his production as per seizure list vide Ext.1. He also stated that police seized a school hand notebook of the deceased along with the letter and after receipt of the letter; he along with Sudhansu Kumar Giri (P.W.3) came to the house of the appellants where they reached at 8.00 a.m. It further seems that the said letter along with the admitted handwriting of the deceased were sent to S.F.S.L. for examination and opinion, but no opinion of the handwriting expert was obtained and proved during trial. Even the letter was not produced in Court by the prosecution. There cannot be any dispute that the letter written by the deceased ten to twelve

Signature Not Verified
Digitally Signed
Signed by: SIPUN BEHERA
Designation: Junior Stenographer
Reason: Authentication
Location: HIGH COURT OF ORISSA, CUTTACK
Date: 31-Jul-2023 10:46:05

days prior to her death was a vital document to be proved, but surprisingly, for the reason best known to the prosecution, it has failed to prove the same for which adverse inference is to be drawn against the prosecution. Nevertheless, this Court is constrained to presume that perhaps there was nothing written in the said letter against the appellants for which the prosecution deliberately withheld the same.

Two witnesses after receipt of such letter had visited the house of the appellants and they are P.W.3 and P.W.7. P.W.3 has stated that when they reached at the house of the appellants at 8.00 a.m., the deceased started crying seeing them, but the female appellants pushed her inside the room and closed the door and when P.W.1 enquired from the deceased about the reasons for the dispute, she informed that the appellants were demanding gold ornaments and she was being ill-treated for not giving the same. The deceased further complained that she was not being given food to eat and was being assaulted by the female appellants. She further stated that the appellant no.1 was also assaulting her. Most peculiarly, the deceased is silent about any demand of dowry in her dying declaration as recorded by P.W.4. P.W.1 has stated that when he along with P.W.3 came to the house of the appellants, he entered into the room of the deceased where she complained before him that the appellants

Signature Not Verified
Digitally Signed
Signed by: SIPUN BEHERA
Designation: Junior Stenographer
Reason: Authentication
Location: HIGH COURT OF ORISSA, CUTTACK
Date: 31-Jul-2023 10:46:05

were ill-treating her for not giving the dowry articles. No further complain was made by the deceased before him as other family members entered inside the room and the deceased cried. It has been confronted to P.W.1 and proved through the I.O. (P.W.9) that he had not stated before him that eight to ten days prior to the death of the deceased, he had been to the house of the appellants and the deceased complained before him that she was being ill-treated due to demand of dowry. Therefore, the evidence of P.W.1, regarding disclosure made by the deceased before him relating to the torture on her by the appellants, being stated for the first time in Court is not acceptable. Even in the dying declaration except stating that the two female appellants i.e. appellant no.3 and appellant no.5 were scolding her since morning, nothing further has been stated by the deceased. She even did not indicate any reason for such abuse. Merely because the two ladies were abusing the deceased since morning as stated in the dying declaration and the deceased took it as an exception and committed suicide, it cannot be said that those two appellants i.e. appellant no.3 and appellant no.5 abetted the commission of suicide.

Since the offence under section 306 of the Indian Penal Code requires an active act or direct act which leads the deceased to commit suicide seeing no better option and this act

Signature Not Verified
Digitally Signed
Signed by: SIPUN BEHERA
Designation: Junior Stenographer
Reason: Authentication
Location: HIGH COURT OF ORISSA, CUTTACK
Date: 31-Jul-2023 10:46:05

must have been intended to push the deceased into such a position that she commited suicide, I am of the humble view that the prosecution has failed to establish any proximate link between the act of the appellants with the commission of suicide of the deceased. Therefore, the conviction under section 306 of the Indian Penal code is not sustainable in the eye of law.

Section 498-A of the Indian Penal Code:

13. Coming to the conviction of the appellants under section 498-A of the Indian Penal Code, the ingredients of this section requires proving the cruelty by husband or the relatives of the husband of the woman and it is the requirement of the law that:

I. the prosecution must prove that the woman was subjected to cruelty or harassment;

II. such cruelty or harassment was meted out to her either by the husband of the woman or by any relative of her husband;

III. such cruelty was with a view to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; and

IV. such harassment was with a view to coerce her or any person related to her to meet any unlawful

HIGH COURT ORISSA सत्यमेव जयते

Signature Not Verified
Digitally Signed
Signed by: SIPUN BEHERA
Designation: Junior Stenographer
Reason: Authentication
Location: HIGH COURT OF ORISSA, CUTTACK
Date: 31-Jul-2023 10:46:05

demand for any property or valuable security or was on account of failure by her or any person related to her to meet such unlawful demand.

The demand of dowry part has already been disbelieved by the learned trial Court and even no charge under section 4 of the Dowry Prohibition Act, 1961 was framed against the appellants. The deceased has also not stated in her dying declaration about the demand of any dowry. As already discussed, there are discrepancies in the evidence of P.W.1 and P.W.3 in relation to cruelty aspect which is stated to have been taken place ten to twelve days prior to the death of the deceased. So far the occurrence is concerned, it is stated by P.W.3 that on that day at about 8.00 a.m., the deceased made a telephone call to him for which they went there and found that there was no vermilion mark on her forehead and she was not wearing bangles and she started crying holding his hands. When he asked to take the deceased with him, the appellant no.2 and appellant no.4 impressed upon him not to do that as it was their family affairs and at the time of torture, when the deceased wanted to see them, she was given a push by the appellant no.5 and put inside a room. However, the appellant no.2 and appellant no.4 gave assurance to P.W.3 that they would send the deceased to her parental place with the appellant no.1 on the

HIGH COURT ORISSA

Signature Not Verified
Digitally Signed
Signed by: SIPUN BEHERA
Designation: Junior Stenographer
Reason: Authentication
Location: HIGH COURT OF ORISSA, CUTTACK
Date: 31-Jul-2023 10:46:05

next day after pacifying the situation. P.W.3 has admitted not to have mentioned all the above aspects in the first information report and he has also admitted not to have stated the same before the police in his statement recorded under section 161 Cr.P.C. Therefore, the evidence of P.W.3 on this score is difficult to be accepted.

P.W.7 stated to have accompanied P.W.3 on that day to the house of the appellants. He also stated that the deceased informed them that she was being assaulted by the appellants and they were demanding ornaments and other articles, but he also admitted not to have stated the same before the police. Therefore, there is also lack of clinching evidence that the appellants subjected the deceased to cruelty or harassment and such cruelty was intended to drive her to commit suicide or to cause grave injury or danger to her life, limb or health (whether mental or physical). Thus, in my humble view, the prosecution has failed to establish the charge under section 498-A of the Indian Penal Code.

14. Though in the dying declaration, it has been mentioned that the deceased was pregnant for two months, but neither from the post mortem report nor from the evidence of any witness, it appears that she was pregnant at the time of her death. It further appears that the appellant no.1, the husband of

Signature Not Verified
Digitally Signed
Signed by: SIPUN BEHERA
Designation: Junior Stenographer
Reason: Authentication
Location: HIGH COURT OF ORISSA, CUTTACK
Date: 31-Jul-2023 10:46:05

the deceased tried to save her for which he also sustained number of burn injuries on his person and the doctor (P.W.6) has proved the injury report of the appellant no.1 and specifically stated that the injuries were possible, if a person tried to save another person who was having burn injuries. P.W.7 stated to have noticed burn injuries on the person of the appellant no.1.

It is no doubt shocking that within a few months of her marriage, at a young age the deceased committed suicide, while staying in the house of her in-laws, by pouring kerosene on her body and setting herself ablaze. The well established rule of criminal justice is that "fouler the crime, higher the proof". In absence any legal evidence against the appellants who are the husband and relatives of the husband to be responsible for the commission of suicide of the deceased, they cannot be held guilty. Mere suspicion, howsoever strong or probable it may be is no effective substitute for the legal proof required to substantiate the charge of commission of a crime. There is a long mental distance between 'may be true' and 'must be true' and this basic and golden rule only helps to maintain the vital distinction between 'conjectures' and 'sure conclusions' to be arrived at on the touchstone of a dispassionate judicial scrutiny based upon a complete and comprehensive appreciation of all features of the

HIGH COURT ORISSA

Signature Not Verified
Digitally Signed
Signed by: SIPUN BEHERA
Designation: Junior Stenographer
Reason: Authentication
Location: HIGH COURT OF ORISSA, CUTTACK
Date: 31-Jul-2023 10:46:05

case as well as quality and credibility of the evidence brought on record.

Conclusion:

15. In view of the foregoing discussions, I am of the humble view that the prosecution has utterly failed to establish any of the charges against the appellants and accordingly, the impugned judgment and order of conviction and sentence passed by the learned trial Court is not sustainable in the eye of law. The conviction of the appellants under sections 498-A/306 of the Indian Penal Code is hereby set aside. The appellants are on bail by virtue of the order dated 30.05.2003 passed by this Court in Misc Case No.228 of 2003. They are discharged from liability of their bail bonds. The personal bonds and the sureties bonds stand cancelled.

Accordingly, the Jail Criminal Appeal stands allowed.

Trial Court records with a copy of this judgment be communicated to the concerned Court forthwith for information and necessary action.

Before parting with the case, I would like to put on record my appreciation to Mr. Gaurav Das, the learned counsel for the appellants for rendering his valuable help and assistance towards arriving at the decision above mentioned. The learned

Signature Not Verified
Digitally Signed
Signed by: SIPUN BEHERA
Designation: Junior Stenographer
Reason: Authentication
Location: HIGH COURT OF ORISSA, CUTTACK
Date: 31-Jul-2023 10:46:05

Amicus Curiae shall be entitled to his professional fees which is fixed at Rs.7,500/- (rupees seven thousand five hundred only).

....
S.K. Sahoo, J.

Orissa High Court, Cuttack
The 20st July 2023/Sipun