

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRA No. 161 of 1996

(An Application under Section 374 of the code of Criminal Procedure)

AFR Sabari Dibya and another Appellants

-Versus-

State of Odisha Respondent

Advocate(s) appeared in this case:-

For Appellant : Mr. A. Pradhan, Advocate.

For Respondent : Mr. S.K. Mishra,
Additional Standing Counsel
for the State.

CORAM:

JUSTICE SASHIKANTA MISHRA

JUDGMENT

30th August, 2023

SASHIKANTA MISHRA, J.

The appeal was originally filed by Sabari Dibya and Braja Kishore Panda (appellant Nos. 1 and 2) respectively. During pendency of the appeal Sabari Dibya having expired, the appeal is confined to appellant No.2, Braja Kishore Panda. Both the appellants had filed this appeal against the judgment of conviction and sentence passed by learned

Additional Sessions Judge, Khurda in S.T. No. 56/32/377 of 1995/94. The appellant No.2 was convicted for the offence under Section 304-B of IPC and Section 4 of the D.P. Act and sentenced to undergo R.I. for 7 years and for one year respectively with both sentences being directed to run concurrently.

3. Prosecution case, briefly stated, is that the deceased Jayanti Panda had married Braja Kishore Panda during 1990. At the time of marriage a sum of Rs. 20,000/- was demanded by his family members as dowry of which Rs. 6,000/- was paid with promise to pay the balance within a year, but because of financial stringency it could not be paid. As a result, Braja Kishore Panda and his mother and sister subjected the deceased to physical and mental cruelty continuously forcing her to take shelter in her father's house. Her family members sent her back to her marital home with assurance to pay the balance amount. On 22.01.1993, the elder brother of the deceased had gone to her house and found the accused persons physically assaulting her and threatening her of murder unless she brought the balance amount from her parents. Her elder brother promised to pay the amount within a week's time but he too was abused. On

23.01.1993, at about 8 P.M. the elder brother of the deceased received information that the deceased had been admitted to Banki Government Hospital and when he went there he found her lying dead. He, therefore, lodged an FIR before the Khordha Police Station on 24.01.1993, which led to registration of P.S. Case No. 16 of 1993 under Section 304 B/34 IPC and Section 4 of the D.P. Act followed by investigation. Upon completion of investigation, charge-sheet was submitted against the accused persons for the aforementioned offences.

4. The plea of the accused persons, apart from denial was that the case was foisted against them falsely as the gold ornaments belonging to the deceased had not been returned to her family members after her death.

5. To prove its case, prosecution examined 7 witnesses and exhibited 9 documents. Prosecution also proved two material objects. Defence examined one witness from its side.

6. The Trial Court framed the following points of determination:

(i) *Did the death of Jayanti, under circumstances other than normal, take place within 7 years of her marriage with accused No. 2 or beyond that statutory period engrafted under Section 304-B of IPC.?*

(ii) *Did the accused persons demand dowry as alleged in connection with the marriage between the deceased and accused No.2?*

(iii) Did the accused persons torture and harass the deceased to bring the balance dowry money and did it take place soon before her death?

(iv) Did the accused persons abet the commission of suicide by the deceased for whatever reason it may be?

7. The Trial Court first appreciated the evidence on record to hold that the marriage of the deceased took place with Braja Kishore Panda in the month of June 1989 and therefore the death of the deceased having occurred in the year 1993, is within the statutory period of 7 years. As regards the other points, the Trial Court held that there is ample evidence to show that the deceased had been subjected to cruelty in connection with demand for dowry by the accused persons soon before her death, which itself was unnatural. On such findings the accused persons were convicted and sentenced as stated earlier.

8. Heard Mr. A.Pradhan learned counsel for the appellants and Mr. S.K.Mishra learned Additional Standing counsel for the State.

9. Assailing the impugned judgment of conviction, Mr. Pradhan would argue that there are material contradictions in the evidence of P.Ws. 1 and 5 and therefore, the Trial Court committed an error in relying upon their evidence. The finding that the death of the deceased having occurred within 7 years of marriage was not conclusively proved. Mr. Pradhan

further argues that the material witnesses namely, father of the deceased and the priest of the marriage were not examined while the barber of the marriage being examined did not support the prosecution. It is also submitted that the prosecution did not lead any evidence as regards the nature of death of the deceased and therefore, the Trial Court committed illegality in holding the accused persons guilty under Section 304-B of IPC.

10. Per contra, Mr. S. K. Mishra learned State counsel would contend that the order of the Trial Court is well reasoned and entirely based on evidence on record, which was found to be cogent, consistent and truthful.

11. In order to appreciate the rival contentions, this Court deems it proper to independently scan the evidence on record to see whether the same supports the order of conviction.

12. It is not disputed that the death of the deceased was not natural. According to the defence, she died by consuming yellow oleander seeds, which is poisonous in nature, marked Exhibit-6 as also the evidence of the Autopsy Surgeon. According to him, the death was due to yellow oleander seeds poisoning. There is no evidence of any mark of injury on any part of the dead body. According to a witness examined by

the defence, namely, Bhagabat Panda (D.w.1), the mother-in-law of the deceased informed that she was vomiting and therefore, they took her to the hospital, where she admitted before her and others to have taken yellow oleander seeds and that she did so because she could not tolerate her stomach pain. The above evidence of D.W.1 even applying the test of preponderance of probability does not appear to be acceptable. This is for the reason that defence never laid the foundation for this plea while cross-examining the prosecution witnesses, nor adduced any evidence whatsoever to show that the deceased was suffering from any kind of stomach ailment, which caused her great pain. It is trite that a defence plea not otherwise established by laying foundation at the appropriate time cannot be accepted. Thus, if the evidence of D.W.1 is discarded, what emerges is that the deceased, who had a son aged about 5 years, committed suicide by consuming yellow oleander seeds. Obviously no woman having a happy married life with a child would contemplate such extreme step unless being compelled by the circumstances. Now whether the circumstances were constant abuse and/or assault by her husband and in-laws-

in connection with their demand for dowry remains to be seen by scanning other evidence on record.

13. As it appears, prosecution has heavily relied upon the evidence of the informant P.W.5 and the elder brother of the deceased (P.W.1). P.W.1 has stated in detail about the demand of dowry of Rs. 20,000/- by the accused persons at the time of marriage and of payment of Rs. 6000/- by them with promise to pay the balance within a year. He has also stated about the torture meted out to the deceased by her in-laws on 22.01.1993 as witnessed by his younger brother, P.W.5. P.W.1 was cross-examined extensively. Some of his statements were proved to be contradictions by way of confronting the same to the I.O. (P.W. 6), but then this Court observes that the material particulars of his testimony have remained unchallenged and the contradictions are not so material as to demolish his version entirely.

Coming to the version of P.W.5, this Court finds that he also stated in vivid details whatever he had stated in the FIR. He specifically stated that he had gone to the house of her sister one day prior to her death and had witnessed the assault on her by her in-laws. Despite extensive cross-

examination his testimony in this regard remained firm. Significantly, the deceased died just one day after his visit which brings the factum of assault etc. squarely within the expression “soon before her death”. The allegation of the deceased being subjected to cruelty by her in-laws including the accused Braja Kishore Panda in connection with demand for dowry appears to be well established. The contradictions pointed out by the defence are not so material as to nullify the evidence. This Court finds the version of P.Ws. 1 and 5 quite probable, cogent, clear and therefore, reliable.

14. As discussed earlier, the deceased had an unnatural death. From the evidence of P.W.2 and 5 it is clearly established that she was subjected to cruelty by her husband and in-laws for dowry. It, therefore, does not take much to presume that she took the extreme step of committing suicide because of the constant cruelty meted out to her for dowry, which was compounded because of her parent's inability to meet the demand.

15. Mr Pradhan learned counsel for the appellant has forcefully argued that it was incumbent upon the prosecution to prove that the death had occurred within 7 years of marriage and in this, the prosecution has completely failed to

do so. Mr. Pradhan has referred to the evidence on record to argue that the Doctor estimated the age of the deceased as 34 years, which means the marriage took place in January 1993. So, 7 years prior to her death would be the year 1985. Mr. s.K.Mishra, on the other hand, contends that the Doctor has not estimated the age of the deceased but mentioned the same in the post-mortem report on his own and hence, it cannot be treated as conclusive more so as the defence did not cross-examine him on this point.

16. Reading of the impugned judgment and considering the version of P.W.1, P.W.5, D.W.1 and the version of the accused persons during their examination under Section 313 of Cr.P.C. it can be held that the marriage took place in June 1989. Accused Braja Kishore Panda, in his examination under Section 313 of Cr.P.C. stated that he had married in the year 1985 (wrongly recorded by the Court as the 1995 in Odia). According to D.W.1, who was examined in April 1996, the deceased has a son, who was aged about 8 years at the time of recording of his testimony before this Court. This means the child was aged about 5 years at the time of the death of the deceased but then no reliance can be placed on the version of D.W.1 in this regard because there is no other

evidence supporting her version. Another important aspect taken into consideration by the Court below is the absence of the name of the deceased in the voter list published in the year 1988 of her matrimonial village, which suggests that she had not been married by then. On comparison of the evidence of P.W.1 and D.W.1, the Court below came to the finding that the marriage had taken place in the year 1989.

This Court, after going through the evidence on record finds nothing wrong in such reasoning so as to interfere therewith.

17. Mr. Pradhan tried to take mileage from the fact that the barber officiating in the marriage did not support the prosecution case. But then as rightly held by the Court below, on the face of such overwhelming evidence being on record proving the cruelty meted out by the in-laws of the deceased, the same cannot operate to demolish the prosecution case in the least. Mr. Pradhan has argued that the inherent improbability of the prosecution case can be further seen from the fact that there are no bodily injuries found on the deceased by the Autopsy Surgeon. Therefore, the version of P.W.5 that she was assaulted by the accused and his mother and sister on the day before her death must be treated as false. This Court is unable to agree with such

contention for the reason that assault on a person may or may not result in detectable injuries.

18. As regards non-examination of the father of the deceased and the priest of the marriage, this Court is of the considered view that the same would not affect the prosecution case in view of the evidence of P.Ws.1 and 5 otherwise establishing the guilt of the accused.

19. Thus, from a conspectus of the analysis and discussion made hereinbefore, this Court finds that the Trial Court rightly appreciated the evidence on record to hold that the charges against the accused persons were fully established. This Court therefore, finds no reason to interfere with the impugned order of conviction and sentence.

20. In the result, the appeal is found to be devoid of merit and is therefore, dismissed. The accused, who is on bail, be taken to custody forthwith and committed to jail for serving the remaining part of the sentence.

**Sashikanta Mishra,
Judge**

**Orissa High Court, Cuttack,
The 30th August, 2023/ Deepak**