

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRA No.107 of 1997

Janardan Sahu and others ***Appellants***
Mr. D. Panda, Advocate

-versus-

State of Odisha ***Respondent***
Mr. Debasis Biswal, ASC

CORAM:
JUSTICE CHITTARANJAN DASH

DATE OF JUDGMENT : 28.07.2023

Chittaranjan Dash, J

1. This Appeal is directed against the judgment and order dated 9th May, 1997 passed by the learned Sessions Judge, Sambalpur in S.T. Case No.128 of 1996 wherein the learned court holding the prosecution to have failed to prove the charges against the Appellants in the offences U/s. 304-B/201/34 IPC read with Section 4 of the D.P. Act, found to have proved the offence U/s. 498-A beyond reasonable doubt and held the Appellants guilty therein, convicted them and sentenced the Appellants to undergo RI for two years with a direction to serve the sentence after the pre conviction detention is set off under Section 428 Cr.P.C.

2. The prosecution case as reveals from the case record and evidence are that the Appellants Janardan Sahu tied the nuptial knot with Kajali (hereinafter called the deceased) on 10th May 1992 as per the Hindu Rites and Customs. It is alleged that at the time of marriage articles were given to the bride as per the rituals and after the marriage the couple

consummated the marriage in the matrimonial home in village Pandri under Sasan P.S. in the district of Sambalpur. It is also alleged that after the marriage the bride and the bridegroom paid visit to the parental house of the bride on many occasions. During her visit the bride used to complain to her parents about the demand of a scooter by the in laws and for its non-fulfillment she was subjected to ill treatment. About three years after the marriage one day sometime in the month of July, 1995 it is informed to the parents of the bride about her ill health. Having heard such information the father and brother of the deceased went to the hospital but they did not find her and returned to the matrimonial home where they found their daughter lying dead. It is also alleged that the dead body instead of being cremated was buried. Subsequently, on the next day the father of the deceased lodged a report with the Police in Sasan Police Station. As the report revealed cognizable offence, the Police treated the same as FIR and registered it vide Sasan P.S. Case No.46 of 1995 and the investigation commenced.

3. In course of investigation, the police exhumed the dead body in presence of the Executive Magistrate and witnesses which was buried, inquest was held over the dead body and the same was sent for post mortem. The I.O examined the witnesses, seized the dowry articles, left the dowry articles on the zimma of the parental side of the bride, seized other incriminating articles, obtained the post mortem report, arrested the accused persons and forwarded them to the court., obtained the chemical examination report of the viscera sent to ascertain the nature of poison consumed by the deceased and after completion of the investigation submitted the Final Form.

4. The case of the Appellants before the learned court below was one of complete denial and false implication.

5. Upon denial of the prosecution case the learned court framed the charges and proceeded with the trial.

6. To bring home the charges, the prosecution examined 13 witnesses in all and proved the documents taken to the evidence on record vide Exts. 1 to 15 besides the material objects proved vide MOs. (i), (ii) and (iii). The Appellants in support of the defence examined two witnesses as DWs 1 and 2.

7. The learned court below having assessed the evidence found the prosecution to have failed to bring home the charges for the offence under Sections 304-B/201 IPC read with Section 4 of the D.P. Act. However, found the prosecution to have successfully proved the sole charge under Section 498-A IPC and having convicted the Appellants sentenced them as narrated above.

8. It is submitted by the learned counsel for the Appellants that the learned court below exceeded in appreciating the evidence both in fact and law and derived a conclusion that the evidence led by the prosecution before it as cogent which is neither prolific nor formidable to hold the prosecution to have proved the charge under Section 498-A and as such the same is not sustainable in the eye of law. It is also argued that the witnesses have miserably failed to account for the demand of dowry and consequent torture allegedly to have meted out to the bride consistently and coherently and the sporadic statement of the witnesses more particularly the parents and the brother of the deceased leaves no

room to deduce that the bride though had the occasion to visit the parental house in frequency nothing transpired from the statement that the demand was consistently been made allegedly to be one for the Scooter and the same was from the side the bridegroom or the in-laws. According to the learned counsel for the Appellants the statement of the father, mother and brother are inadequate to draw even an inference that there was a demand of dowry on the face of the evidence of the defence witness more particularly DW 1 who is none but the co-brother in law of the father of the deceased who was the Mediator in the marriage who specifically stated on oath that there was no demand of dowry at the time of marriage and he had visited the matrimonial house of the deceased and at no point of time he had ever come across any complaint either from the side of the deceased or the in laws with regard to the demand of the Scooter.

9. Learned Additional Standing Counsel on the other hand besides a note of submission, submits that the evidence of P.Ws.10, 11 and 12 are consistent to the effect that there was demand of dowry and continuous ill treatment being meted out to the deceased which the deceased could not reconcile and having found all other ways foreclosed took the drastic step of doing away with her life by consuming poison. It is also submitted that the evidence of PWs.10, 11 and 12 are sufficient to bring home the charges in the offence under Section 498-A and held the learned trial court to have rightly found the Appellants committed the offence and canvassed no interference to the judgment impugned.

10. Needless to say that grave is the offence greater should be the proof. Having regard to the evidence led before the court below, on a meticulous examination, this Court found the evidence led through the **CRA No.107 of 1997**

witnesses while does not inspire confidence with regard to the statement of the witnesses viz. P.W.1 to 6, the evidence in respect to the kith and kin such as PWs.10, 11 and 12 are not consistent to each other so also to their earlier statement recorded under Section 161 Cr.P.C. by the Police in course of investigation.

11. Before advertng to the merit of the case it is necessary to delve into the back ground facts of the incident as borne out from the evidence. Considering the death occurred to the deceased within seven years of the marriage allegedly for the ill-treatment and torture meted out to her in connection with demand of dowry soon before the death termed as “dowry death”, the Appellants faced charges in the offence U/s. 498-A/304-B/34 Indian Penal Code. Since there was allegations that in order to screen the evidence attempt was made to disappear the evidence by burring the dead body in absence of the members of the Parental side of the deceased, the Appellants also faced charge in the offence U/s.201 Indian Penal code and the offence U/s. 4 D.P. Act.

12. The learned court below disbelieved the evidence led by the Prosecution to bring home the charges in the offence U/s. 304-B/201/34 IPC read with section 4 D.P. Act though held the death of the deceased to have occurred in the matrimonial house within seven years of the marriage and the same being not natural. However, the learned court below held the Prosecution to have proved the charge U/s. 498-A IPC.

13. The evidence disclosed the death to have occurred due to consumption of poison and the CE report reveals the poison to have contained organo phosphorous substance.

14. In order to bring home the charge for the offence under Section 498-A IPC it is necessary to prove the following ingredients :

- (1) The woman must be married;
- (2) She must be subjected to cruelty or harassment; and

For proving offence under section 498A, the complainant must make allegation of harassment to the extent so as to coerce her to meet any unlawful demand of dowry, or any willful conduct on the part of the accused of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health. In the instant case, no such allegation was made or otherwise could be found out so as to arrive at opinion that appellants prima facie committed such an offence.

For the purpose of section 498A, harassment simpliciter is not "cruelty" and it is only when harassment is committed for the purpose of coercing a woman or any other person related to her to meet an unlawful demand for property, etc. that it amounts to "cruelty" punishable under section 498A.

- (3) Such cruelty or harassment must have been shown either by husband of the woman or by the relative of her husband.

The basic ingredients of section 498A are cruelty and harassment, further in explanation (b) which relates to harassment there is absence of physical injury but it includes coercive harassment for demand of dowry, it deals with patent or latent acts of the husband or his family members.

The consequences of cruelty which are likely to drive a woman to commit suicide or to cause grave injury or danger to life, limb or health, whether mental or physical of the woman

are required to be established in order to bring home the application of section 498A.”

15. Taking a cue from the evidence led by the prosecution before the court below, on its examination in thread bare it appears that the deceased soon after her marriage had paid visit to the parental house on different occasions and made complaint of ill treatment by her in laws under the pretext of a demand of Scooter. The statement of the witnesses more particularly P.Ws. 10, 11 and 12 seems to be general in nature inasmuch as none of these witnesses have clearly spelt out the manner in which the deceased was subjected to ill treatment and harassment.

16. There is absolutely no whisper as to when such ill treatment was meted out and how was the deceased facing the same. The veracity of the testimony of these witnesses could have been taken seriously had there been evidence to the effect that the deceased till her death continued to complain as to the ill treatment meted out to her for the demand of dowry of Scooter. Whereas, in the entire gamut of prosecution evidence including that of the parents and close relative such as P.Ws.10, 11 and 12 nothing appears that the deceased besides her complaint at the initial days to have continued or complained subsequently at any point of time so as to deduce that such demand or any other overt act of the Appellants could be of such nature thereby she felt all her ways foreclosed and forced to commit suicide. In absence of such consistent evidence it is unreasonable rather improbable to believe the evidence to be sufficient to bring home the charge. It further vouch safe from the findings of the learned court below itself when it took the view in its findings at paragraph-9 that “at least there is some material to show that the accused

Janardan, Mayadhar, Jibardhan and Surubali tortured the deceased if not for dowry but because of her incapacity to bear a child” which is absolutely not the case of the prosecution.

17. Very surprisingly, the evidence of none of the witnesses including P.Ws.10, 11 and 12 gives inkling as to any torture being inflicted on the deceased for her having failed to bear a child after the marriage. Consequently, none of the ingredients necessary to constitute the offence U/s. 498-A stands proved by the prosecution.

18. In view of the discussions as above, it can safely be held the prosecution to have failed to prove the charge U/s.498-A IPC. Therefore, the conclusion derived by the learned court below holding the Appellants guilty in the offence U/s. 498-A IPC based on surmises and presumption is not sustainable in the eye of law and deserves to be set aside. The Appellants stands accordingly acquitted from the said charge. They be discharged from the bail bond. The appeal is allowed.

सत्यमेव जयते

(Chittaranjan Dash)
Judge

KC Bisoi /Sr. Secretary