A.F.R.

IN THE HIGH COURT OF ORISSA AT CUTTACK

JCRLA No.60 of 2013

(An Appeal U/S.383 of the Code of Criminal Procedure, 1973 against the judgment of conviction and order of sentence passed by Sri Kashinath Rout, Adhoc Addl. Sessions Judge, Fast Track Court, Keonjhar in S.T. Case No.63/182 of 2012 corresponding to G.R.Case No. 409 of 2012 arising out of Pandapada PS Case No.08 of 2012 of the Court of learned SDJM, Keonjhar).

Paresh Kumar Naik *...* ***Appellant***

-versus-

State of Odisha *...* ***Respondent***

For Appellant *:* ***Mrs. P.Mishra, Advocate***

For Respondent *:* ***Mrs. S.Pattanaik, AGA***

CORAM:

HON'BLE MR. JUSTICE D. DASH

HON'BLE MR. JUSTICE G. SATAPATHY

DATE OF HEARING :07.11.2023

DATE OF JUDGMENT:16.01.2024

G. Satapathy, J.

1. Grieved by the judgment and order of sentence dated 09.01.2013 passed by the learned Adhoc Additional Sessions Judge, Fast Track Court, Keonjhar in S.T. Case No. 63/182 of 2012, the appellant has preferred this appeal challenging his

conviction for offence U/S. 498-A/302/304-B of Indian Penal Code, 1860 (in short the "IPC") and Section 4 of Dowry Prohibition Act, 1961 (in short the "DP Act") and sentence to undergo imprisonment for life with fine of Rs.20,000/- in default whereof, to undergo further Rigorous Imprisonment (R.I) for one year for offence U/S. 302 of IPC; to undergo RI for two years with fine of Rs.1,000/-, in default whereof, to undergo R.I. for further three months for offence U/S. 498-A of IPC and to undergo R.I. for one year with fine of Rs.1,000/-, in default whereof, to undergo further RI for further one month for offence U/S. 4 of D.P. Act with stipulation of all the sentences to run concurrently. The learned trial Court by the impugned judgment and order has not awarded any separate sentence to the appellant for offence U/S. 304-B of IPC, while acquitting the parents-in-law of the deceased.

2. The prosecution case in brief is one Satyabhama of village Jharbeda (hereinafter referred to as the "deceased") who was the youngest

daughter of P.W.4-Dasaratha Khandei had married to her neighbor, the appellant out of courtship and after the marriage, the deceased was also taking household articles such as rice, cloths etc. from her parents' house and the appellant was assaulting the deceased if she did not bring such household articles. However, suddenly on 13.04.2012 at about 7.30 A.M. in the morning after hearing the cries of his daughter "MARI GALI MARI GALI" which was coming out of her matrimonial house, P.W.4 and his wife(PW5) rushed to her house and saw the appellant assaulting the deceased by means of a wooden stick locally known as "RUA" inside an open room and the deceased fell down on the ground by sustaining head injury and died at the spot. On seeing P.W.4 and P.W.5, the appellant ran away from his house by throwing the "RUA". Immediately after the incident, P.W.4 and P.W.5 raised commotion and thereafter, P.W.9(brother-in-law of the deceased) and some villagers reached at the spot.

On this incident on the same day at about 8.45 A.M., P.W.4 lodged a FIR before OIC Pandapada P.W.12-Balewar Gidhi who registered Pandapada P.S. Case No. 08 of 2012 against the appellant for commission of offence U/S. 498-A/304-B/302 of IPC and took up investigation of this case, in the course of which, he examined the witnesses, conducted inquest over the dead body of the deceased in presence of Executive Magistrate under Ext.3, prepared the spot map under Ext.10, sent the dead body to DHH, Keonjhar for PM examination, seized the blood stained earth and sample earth from the spot under seizure list Ext.6, also seized the weapon of offence (RUA) stained with blood under seizure list Ext.5, arrested the appellant, also seized the wearing apparels of the appellant under seizure list Ext.1 as well as seized the wearing apparels of the deceased under Ext.2 and lastly, sent all the incriminating materials to SFSL Rasulgarh, Bhubaneswar for chemical examination. On conclusion of investigation, P.W.12 submitted charge sheet against the appellant

and parents-in-law of the deceased for offences punishable U/Ss. 498-A/302/304-B of IPC and Section 4 of D.P. Act under which cognizance was taken resulting in trial in the present case after denial of the accused persons to the charge for the aforesaid offences.

3. In support of the charge, the prosecution examined altogether 12 witnesses viz. P.Ws. 1 to 12 and proved certain documents under Exts. 1 to 12 as against the sole oral evidence of the appellant as DW1 in his defence. Of the witnesses examined, P.Ws. 4 & 5 are the eye witnesses to the occurrence, whereas P.W.3 is the brother of the deceased, P.W.7 is the elder sister of the deceased and P.W.9 is the brother-in-law of the deceased. P.W.10 is the doctor who conducted autopsy over the dead body, P.W.12 is the IO, P.Ws. 1, 2, 6 and 8 are independent witnesses-cum-villagers.

4. The plea of the appellant in the course of trial was denial simplicitor and false implication.

5. After appreciating the evidence on record upon hearing the parties, the learned trial Court by the impugned judgment convicted the appellant, while acquitting the parents-in-law of the deceased by mainly relying upon the evidence of eye witnesses to the occurrence.

6. Assailing the impugned judgment of conviction and order of sentence, Mrs. P.Mishra, learned counsel for the appellant has submitted that the evidence of P.Ws. 4 & 5 are not wholly reliable since they being the parents of the deceased are interested witnesses and if the evidence of P.Ws.4 and 5 is eschewed, the prosecution would remain with no evidence to prove the guilt of the appellant for the offences. It is further submitted that the learned trial Court has fallen in error in appreciating the evidence while holding the appellant guilty of the offence since it was not possible for P.W.4 and 5 to see the occurrence as the incident appears to have taken place inside the house of the appellant, but P.W.4 and 5 are not the inhabitants of the house of the appellant and

therefore, the reliance placed on the evidence of P.Ws.4 and 5 by the learned trial Court is on erroneous premises and therefore, the guilt of the appellant having not established by the prosecution, he is entitled to a clean acquittal. In summing up his argument, Mrs. P.Mishra, learned counsel for the appellant has prayed to allow the appeal by setting aside the judgment of conviction and order of sentence.

7. On the other hand, Mrs.S.Pattanaik, learned Additional Government Advocate has submitted that there is absolutely no rule of law that the evidence of relative of the deceased cannot be relied upon, rather the trial Court has to be on guard while relying upon the evidence of the relative of the deceased, but in this case, the defence having not demolished the evidence of P.Ws. 4 and 5, there evidence can be well relied upon. It is further submitted that why the parents of the deceased would tell false before the Court for the murder of their dearest-one who was their daughter and nothing has been brought in the

evidence by the defence to disbelieve the evidence of P.Ws. 4 and 5 which is otherwise credible and acceptable and therefore, the conviction of the appellant cannot be questioned. Accordingly, Mrs. S.Pattanaik, learned Additional Government Advocate has prayed to dismiss the appeal.

8. After having bestowed an anxious and careful consideration to the impugned judgment of conviction together with evidence on record keeping in view the rival submissions to examine the sustainability of the conviction of the appellant, it appears that the learned trial Court has wholly and mainly relied upon the evidence of eye witness to the occurrence and the relative of the deceased to base conviction of the appellant. This Court, therefore, direct itself to re-appreciate the evidence of such witnesses at the threshold. Since the appellant was found guilty of the charge for offence of murder, it is required to be seen as to whether the prosecution has primarily established the two factors, which are required to be established with legally admissible evidence, to bring

home the charge of murder against the appellant; firstly, the homicidal death of the deceased and secondly, the responsibility of the appellant to author such homicidal death of the deceased. In order to ascertain the nature of death, the evidence of doctor, who had conducted the autopsy and furnished the opinion as to cause of death of the deceased is required to be appreciated first and in this case, the Dr.Abhijeet Kuanr being examined as P.W.10 has testified in the Court that he along with Dr.Nibedita Nayak had conducted PM examination over the dead body of Satyabhama Naik. According to P.W.10, he had noticed the following injuries on the person of the deceased:-

> (*i) Multiple abrasions on the posterior aspect of right thigh.*
> *(ii) Multiple abrasions on anterior aspect of left thigh.*
> *(iii) The whole skull bones were fractured and some of the bones were missing from the injury from which the entire membrane and brain tissues were absent, from inside the fractured skull area.*

The opinion of the doctor as deposed to in the evidence was the injuries were ante mortem in nature

and cause of death was due to haemorrhage and shock resulting from injures to vital organ like brain. The evidence of P.W.10 further transpires that on 13.06.2012, the police by producing a wooden plank (weapon of offence) sought for a query and they, accordingly, answered the queries on examination of weapon of offence, the wooden plank, as under:-

> *(i) Yes, the produced wood is strong enough to cause death of an adult human being,*
> *(ii) The injuries inflicted on the head of the deceased could be possible by the produced weapon of offence, the wooden plank.*

A careful scrutiny of evidence of P.W.10 would unambiguously goes to say that the death of the deceased was on account of injuries sustained by her. Besides, the inquest report under Ext.3 as well as the FIR lodged by PW4 together with the evidence of PWs.3 to 5, it is rightly held by the learned trial Court that the prosecution has established the homicidal death of the deceased beyond all reasonable doubt.

9. On adverting to the next point as to who is responsible for the death of the deceased, it appears that PW4 being the father of the deceased as well as

one of the eye witnesses to the occurrence has testified in the Court that he and his wife heard cries of the deceased, who was shouting to save her and he along with his wife (PW5) rushed to the spot house and saw the appellant assaulting his daughter by means of a wooden log and his daughter died instantaneously at the spot. PW4 has stated in his evidence that he lodged the FIR under Ext.4 and the police held inquest over the dead body of the deceased under Ext.3. Nothing substantial benefiting the defence was elicited from the mouth of PW4, rather the defence has brought out from the mouth of PW4 that when he along with her wife reached to the spot house, no other persons had come to the spot house. This Court, however, considers it apposite to clarify as to how PWs.4 and 5 heard the cries of the deceased. It is found from the evidence of PW4 that the house of accused person is situated near to his house intervened by a road which was also confirmed by the appellant himself while being examined in his defence as DW1 by answering in the cross

examination that the house of his father-in-law is situated on the other side of the road and the distance between the two houses is very little. Additionally, it was not the case of the defence that the cries or commotion raised in the house of appellant would not be audible in the house of informant.

10. Yet, another eye witness to the occurrence is the mother of the deceased Kuntala Khandei who being examined as PW5 has stated in her evidence that on a morning hour, the accused person was assaulting his daughter and she heard shouting of her daughter "Marigali Marigali" (I am dying) and she along with her husband (PW4) rushed to the house of the appellant immediately and saw the appellant assaulting her daughter by means of a wooden log and the appellant was inflicting repeated blows on her daughter and her daughter was shouting. It is her specific evidence that her daughter sustained multiple injuries on her head and she succumbed at the spot and her husband went to the police station to report

the matter. The defence albeit has cross examined PW5 at length, but nothing was brought out from her mouth to discredit her evidence, rather the cross examination of PW5 lends assurance to the prosecution case as it was elicited from her mouth "on hearing shouting of her daughter, she rushed to the house of accused persons and the assault was going on inside the house of the accused persons and she saw the occurrence from the window". On a conjoint reading of the evidence of PWs.4 and 5, not only it appears that the evidence of PWs.4 and 5 is corroborated to each other in material particulars with regard to the assault on the deceased by the appellant, but also the same is found corroborated by the medical evidence of the doctor-PW10 who on conducting autopsy over the dead body of the deceased had found fracture of skull.

11. On a cumulative assessment and re-appreciation of evidence on record, it appears that the prosecution has not only established the homicidal death of the deceased, but also has

established the fact beyond all reasonable doubt that the appellant had indiscriminately assaulted the deceased by means of a wooden log locally known as "RUA" causing her instantaneous death. This Court, therefore, has no hesitation to accept the finding of the learned trial Court as to the guilt of the appellant for offence U/S.302 of IPC which appears to have been established by the prosecution beyond all reasonable doubt through legally admissible evidence.

12. The appellant was also charged for other offences including offence U/S.498-A of IPC which provides for punishment of the husband or relative of husband of a woman subjecting her to cruelty. The explanation appended to Section 498-A of IPC provides that for the purpose of this section, "cruelty" means any willful conduct which is 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 (whether mental or physical) of the woman, or harassment of the woman where such harassment is

with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand. It is, therefore, clear that the husband or the relative of the husband can be held responsible either for (i) subjecting a woman to cruelty in terms of any willful conduct to cause grave injury or danger to life, limb or health or (ii) for harassing the woman with a view to coerce to meet any unlawful demand of property or valuable security from her.

13. In this case, although PW3, PW4 and PW5 being the brother, father and mother of the deceased have stated against the appellant for subjecting the deceased to torture for demand of further dowry like demand for "TV and motor cycle", but the aforesaid three witnesses have admitted in their cross examination that the appellant had not demanded any TV or motor cycle. Even, PW2 and 5 have admitted in cross examination that at the relevant point of time, their village was not electrified.

Further, PW3 has admitted that the accused Paresh Naik(appellant) had not demanded to supply any TV and motor cycle. Similarly, PW4 has also admitted in cross examination that as his daughter(deceased) was in love with accused Paresh Kumar Naik(appellant), there was no demand from the side of accused persons. Although, the examination-in-chief of PW5 some how reveals of demand of TV and other household articles by the accused persons, but the same appears to be omnibus in nature and PW5 has not clarified as to who had demanded the TV as a dowry. Hence, the evidence of PW5 with regard to demand of dowry appears to be not acceptable and the same cannot be believed. It, therefore, appears from the evidence of near relatives of the deceased that there was no demand of dowry from the side of the appellant, but merely because there was no demand of dowry, the same by itself cannot exonerate the appellant for offence U/S.498-A of IPC which also makes the willful conduct of the appellant in assaulting the deceased to cause injury liable

under this Section. The evidence of PW3 also transpires that the deceased was not given proper food in the house of accused and she was physically tortured and assaulted by the appellant and he was compelled to leave her matrimonial house. The aforesaid evidence of PW3 remains unchallenged in his cross examination. PW4 has also stated in his evidence that the appellant was assaulting his daughter by means of wood in the morning hours of the day. More or less, PW5 being the mother of the deceased has stated in her evidence that her daughter was maltreated by the accused persons and torture and harassment on her daughter was continuing. Similarly, the sister of the deceased being examined as PW7 has explained in cross examination that she has not seen personally the torture and harassment meted out the deceased, but she heard the same from the deceased. Similarly, PW8 has stated in his evidence that the appellant was physically torturing the deceased. A subtle analysis of evidence on record, this Court finds some evidence

with regard to appellant torturing the deceased physically. Albeit, the prosecution has not been able to establish the demand of dowry, but the very infliction of torture by the husband to wife by itself is punishable U/S.498-A of IPC. Hence, on a close scrutiny and re-appreciation of evidence on record, this Court finds the prosecution to have established the offence U/S.498-A of IPC against the appellant beyond all reasonable doubt for torturing the deceased by assaulting her prior to her death for other reason, but not for demand of dowry.

14. On coming to the charge for offence U/S.304-B of IPC and Section 4 of DP Act, this Court has already found scanty or no evidence with regard to demand of dowry by the appellant. Even though, the death of the deceased was found to have been established by the prosecution to have taken place within seven years of her marriage and the cause of death being otherwise then normal circumstance as well as she being found killed by the appellant on appreciation of evidence on record, but the cause of

death being not proximate to or in connection with demand of dowry, neither the charge for offence U/S.304-B of IPC nor for offence U/S.4 of DP Act stood attracted against the appellant since there is absolutely no evidence to indicate that the appellant demanded dowry in terms of Section 2 of DP Act which provides the definition of dowry as "any property or valuable security given or agreed to be given either directly or indirectly by one party to a marriage to the other party to the marriage or by the parents of either party to a marriage or by any other person, to either party to the marriage or to any other person, at or before or any time after the marriage in connection with the marriage of the said parties" and in this case, there is absolutely no evidence to indicate that the appellant had ever demanded any dowry and the so called allegation of demand of dowry being omnibus in nature, rather the same being admittedly contradicted in the evidence of parents, brother and sister of the deceased, the same cannot be legally accepted. It, therefore,

appears that the evidence available on record do not establish the charge for offence either U/S.304-B of IPC or U/S 4 of DP Act against the appellant in terms of the standard of proof beyond all reasonable doubt, but the learned trial Court has fallen in error in finding the appellant guilty for the offences U/S.304-B of IPC and U/S 4 of DP Act without marshalling the evidence on proper perspective inasmuch as one of the ingredients of 304-B of IPC, is "cruelty or harassment for or in connection with any demand of dowry" which was found not established by the prosecution.

15. On a conspectus of evidence on record together with discussions made hereinabove and carefully marshalling and re-appreciating the evidence on record, while finding the learned trial Court to have rightly found the appellant guilty for offence U/Ss.302/498-A of IPC, this Court has found the appellant not guilty to the charge for offences U/S.304-B of IPC and U/S 4 of DP Act and, therefore, the appellant is entitled to an acquittal for offences

U/S.304-B of IPC and U/S 4 of DP Act, but his conviction for offence U/Ss.302/498-A of IPC being on sound appreciation of law stands maintained. Hence, the appellant while being acquitted for offence U/S.304-B of IPC and Section 4 of DP Act, is found convicted for offence U/Ss.302/498-A of IPC.

16. In the result, the appeal is allowed in part to the extent indicated above on contest, but no order as to costs. Consequently, the judgment of conviction and order of sentence passed on 09.01.2013 by the learned Adhoc Additional Sessions Judge, Fast Track Court, Keonjhar in S.T. Case No. 63/182 of 2012 are hereby confirmed only for offences U/Ss.302/498-A of IPC, but the appellant is acquitted of the charge for offences U/S.304-B of IPC and U/S.4 of DP Act.

(G. Satapathy)
Judge

I Agree

(D.Dash)
Judge

Orissa High Court, Cuttack,
Dated the 16th day of January, 2024/Kishore