
(2002) 04 OHC CK 0016
In the Orissa High Court
Case No : Criminal Appeal No. 196 of 1998

Babu @ Lingaraj Mahakul @ Mahakud and Others	APPELLANT
Vs	
State of Orissa	RESPONDENT

Date of Decision : 30-04-2002

Acts Referred:

Penal Code, 1860 (IPC) — Section 302, 34, 498(A)

Citation : (2002) 94 CLT 76 : (2003) CriLJ 1011 : (2002) 2 OLR 52

Hon'ble Judges : P.K. Mishra, J;B. Panigrahi, J

Bench : Division Bench

Advocate : B. Panda, S.R. Mohapatra, B.K. Samal, S.C. Mishra, G.P. Panda and S.K. Das, for the Appellant; G.K. Mohanty, Additional Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

B. Panigrahi, J.—This appeal portrays the woes of a young lady who was allegedly strangled in her in-law's house whereupon the learned Addl. Sessions Judge convicted each of them under Sections 498(A)/34 and 302/34, IPC and sentenced each of them to undergo rigorous imprisonment for 2 years and to pay a fine of Rs. 5007- for the offence u/s 498(A)/34, IPC and to undergo imprisonment for life u/s 302/34,IPC.

2. Undaunted by the Judgment of the learned Addl. Sessions Judge, Sambalpur the appellants have preferred this appeal.

3. The skeletal picture of the prosecution story as narrated in course of trial is as follows :

That on 26.8.96 at about 9.00 P.M. the de facto complainant Anam Charan Parida (P.W. 6) submitted a written report in Hirakud Police Station by stating that his sister Bhagabati was given marriage to the appellant Lingaraj Mahakud of Hirakud about three months preceding the incident. At the time of marriage on the demand made by the appellants, deceased Bhagabati's parents had to willy-

nilly arrange Rs. 80,000/-, 8 tolas of gold ornaments and other house-hold articles. The said articles were delivered to the appellant when Bhagabati joined their family at Hirakud, but her in-laws were unhappy with the presentation given by the deceased's parents and always pressurising her to bring more dowry articles. They sometimes chastised her by saying that had they got appellant Lingaraj's marriage at some place other than with Bhagabati, they would have obtained lakhs of Rupees. Due to unsatiated greed for dowry they used to put Bhagabati to constant torture and mental pressure. They further compelled to bring Rs. 30,000/- for the purpose of a scooter. Two of her sister-in-laws used to tell her that if she would not bring the money she would not be permitted to leave the matrimonial home.

4. In this background it is slated that on 26.8.96 at about 7.00 A.M. appellant Lingaraj suddenly appeared in the house of P.W. 6, the de facto complainant Anam Charan Parida (P.W. 6) and informed that Bhagabati, the deceased was unwell and suffering from fever, and Bhagabati wanted to see her parents, therefore, he had to come all the way to take them to his house. So in the same conveyance Bhagabati's brother (P.W. 6) and P.W. 7, father proceeded to Hirakud and reached there at 6.00 P.M. But no sooner did they arrive at the house of Lingaraj, than they heard Bhagabati had already expired since 24.8.96 on account of injuries due to demand for dowry.

5. The O.I.C. of Hirakud Police Station treated the above report as F.I.R. and registered a case as Hirakud P.S. Case No. 75 of 1 996 on 26.8.96 under Sections 498(A)/34 and 302/34, IPC and took up investigation. In course of investigation it further revealed that preceding this report another information was lodged by one Bhikari Charan Mallik of Indal Colony, Hirakud whereupon Hirakud P.S. Case No. 4 dated 24.8.96 was registered and accordingly the A.S.I. (P.W. 14) was deputed to cause an enquiry about the unnatural death of Bhagabati. The A.S.I. visited the spot and also Burla Hospital. He, however, noticed the deadbody of Bhagabati lying on the verandah of the casualty ward. He requisitioned the services of a Magistrate and sent a message to the relations of the deceased. Inquest was conducted in presence of the Executive Magistrate pursuant to which the inquest report was prepared vide Ext. 8. He immediately sent the deadbody for post-mortem examination. Thereafter investigation of U.D. Case was closed.

6. In course of investigation the S.I. of Police (P.W. 7) examined the complainant (P.W. 6), and Laxmidhar Das (P.W. 21), the scribe of the F.I.R., visited the spot, examined the witnesses, seized the house-hold articles belonging to Bhagabati, arrested the accused persons, received the post-mortem report and also made a query from the Professor-cum-H.O.D. of F.M.T. Department of V.S.S. Medical College, Burla and received his report vide Ext. 10 and handed over the charge of investigation to his successor, Shri A. Kujur, the S.I. of Police, who too was transferred and handed over the case to Inspector of H.R.P.C., Cuttack (P.W. 18) to conduct further investigation. In course of investigation the Inspector of Police

had got recorded the statement of Laxminarayan Saraf (P.W. 10), Li.....(Sic) @ Goutam Mahananda (P.W. 11) and Kuturu Nag (P.W. 12) u/s 164, Cr.P.C. On completion of investigation he placed the charge-sheet against the appellants under Sections 198-A/302/406/420/201/34, IPC. During the pendency of trial the accused Golak Mahakud having died, the case has abated against him.

7. The plea of the appellants before the trial court was that the story in the manner presented by the prosecution had in fact not taken place. The genesis and substratum of the prosecution story was completely distorted and there have been sufficient manipulation, embellishment and exaggeration. Thus in the aforesaid context, the trial Court's judgment should be upset.

8. At the outset we may state here that the trial Court's judgment has not been happily worded. Therefore, it took us to again go through the entire prosecution case and reshape the judgment properly. Although there was a charge u/s 304-B, IPC read with Sections 3 and 4 of the Dowry Prohibition Act, but the learned Addl. Sessions Judge acquitted the appellants of the charges. In a case where the death of a woman has been allegedly caused on account of any burns or bodily injuries or occurred otherwise than in normal circumstances within 7 years of her marriage and it is established that soon before her marriage she was put to cruelty or harassment by her husband or any relatives of her husband in connection with demand for dowry, such death shall be called "dowry death". The provision further obligates that a presumption shall arise that the husband or the relative shall be deemed to have caused her death. In this case the prosecution was unable to prove the ingredients, therefore, the trial Court acquitted the appellants of the aforesaid charge. Now the only circumstance that has to be looked into is whether the appellants have caused the death of the victim Bhagabati. We notice the instances of bride killing alarmingly on the increase. If the society should be ridden off this growing event, it is imperative that whenever dastardly crimes of this nature are detected and the offence is brought home to the accused, the courts must deal with the offender in an appropriate manner in order to wipe out the social evils of the society. The following circumstances have been placed by the prosecution before the trial Court.

(i) The marriage between deceased Bhagabati and Lingaraj was hardly within few months before her death.

(ii) The death has taken place in the house of the bridegroom, namely Lingaraj where all the appellants & other accused persons used to live.

(iii) That there was a quarrel preceding the occurrence on account of fulfilment of the dowry demand as evident from the statement of deceased to her father.

(iv) The appellants demonstrated an impression that the deceased met a natural death, but no evidence worthwhile could be produced before the court.

(v) Although Bhagabati met an unnatural death, but information about her death

reached two days after to her parents.

(vi) The evidence of P.W. 1, the E.S.I. doctor revealed that the deceased had died before his arrival.

(vii) Evidence of P.W. 5, Professor & H.O.D. of F.M.T. Department of V.S.S. Medical College unequivocally established that the deceased Bhagabati met a homicidal death.

(viii) Wrong communication sent to the family of the deceased by giving incorrect address.

(ix) No explanation whatsoever from the appellants as to how the death of Bhagabati occurred in their house.

(x) No independent eye-witnesses can be available to present the prosecution story as the incident took place inside the appellants' house.

(x) The appellants' statement as regards death of Bhagabati was found to be a blatant lie.

9. The undisputed facts revealed in this case are :

that the marriage between the deceased Bhagabati and the appellant Lingaraj was solemnised on 8.5.96 whereafter she joined her matrimonial house. From the evidence of P.Ws. 1 to 3 who have become hostile to the prosecution it is revealed that undisputedly the marriage between the appellant and deceased Bhagabati took place within six months preceding the incident. She also used to stay in the appellants' family. On the date of incident they heard an outcry of the villagers near the house of the appellants, accordingly they reached there. But, however, those witnesses thereafter did not support the prosecution case, although they allegedly stated during investigation about the incident.

10. P.W. 4 was the Medical Officer posted at Hiraikud E.S.I. hospital who deposed that on 24.8.96 at 6.30 P.M. on the requisition by the appellant Lingaraj he went to his house and found his wife lying dead on the bed facing upward. He did not declare her dead, lest the villagers who assembled near his house might create disturbance and, thus, he advised the appellant to take her to the Medical College in order to avoid further commotion. From his examination it is further noticed that he has seen ligature mark on her neck. An impression was given to P.W. 4 that the deceased was suffering 15 days prior to the incident. It is not known if actually she was suffering 15 days preceding the incident, then, why the appellants did not send any words to her family members. P.W. 5's statement also goes to establish that on the date of incident he was on outdoor duty and a lady was brought dead to the hospital. Thereafter he informed the matter to Burla Police Station in writing. However, his statement does not help much to the prosecution.

11. From the judgment it appears that there were six accused persons arrayed in this case out of which two accused, namely Kumari Goralaxmi Mahakul and

Kedarnath Mahakul were acquitted of the charges by the learned Sessions Judge. Accused Golak was dead during the pendency of the appeal leaving only three appellants who filed this appeal.

12. The appellants failed to produce any document to establish that the deceased was suffering from any disease prior to her death. In this background we, therefore, do not believe the plea advanced by the appellants that the deceased met a natural death.

13. The brother of the deceased had lodged the report on 26.8.96 after coming from his village consequent upon the information received from the appellants. By then post-mortem examination of his sister Bhagabati was already over. He claimed to have noticed a ligature mark on the neck of the deceased and some injuries on her legs. By seeing such ligature mark on the neck, he suspected that it must have been a homicidal death but not a suicidal or natural death. As he strongly suspected that his sister must be the victim of some foul play by the appellants, he, therefore, lodged a F.I.R. against them. From the F.I.R. story it is gathered that the deceased might have met either a suicidal or homicidal death. In this background it is to be ascertained whether Bhagabati met a homicidal death.

14. From the text of deposition of P.W. 10 it is revealed that he was residing in the house belonging to appellant Lingaraj. On the date of incident around 5.10 P.M. after he entered into the house went to wash his hands and hardly within 10 to 15 minutes thereafter he heard a sudden scream from the bath room "Maalo". Thereafter he came to verandah and noticed the appellant Golak, his mother brought out Bhagabati from the bath room. Then they took her inside the house. People started gathering near the house of Lingaraj from then onwards. He locked out the room and came outside. P.W. 10 heard the cry of Gouri as "Maalo". From his evidence it is found that the body of Bhagabati was inside the bath room where the appellant Gouri raised still cry "Maalo".

15. From the evidence of P.W. 20, the Scientific Officer, O.F.S.L. it has been proved that on 29.9.96 he visited the spot which was the residential house of Golak Mahakud (since dead) situated at Durga Mandap Chhak of Hirkud. At the relevant time the Magistrate was also present, but there were no inmates and the house was locked. Again, he visited the spot on 31.11.96 with his staff as well as the Executive Magistrate and the I.O. He examined the bath room of the house where the alleged occurrence was suspected to have taken place. The total height of the roof from the floor of the bath room was 7' 1" and the beam was placed 4" below the roof. There was no mark of violence either on the beams for suicidal hanging or of the finger prints of the foot on the walls of the room. It was found that the front door of the bath room was in open condition. From the evidence of P.W. 20 it has been further brought out by the defence that, in case a person is subjected to throatling, there would be mark of violence on the floor of the room. From the evidence of P.W. 17, Susil Kumar Panigrahi it appears that the place of occurrence was the bath room. He did not measure the length and

breadth of bath room. He has also not noted whether there was any mark of violence on the walls or any suicidal signs on the rafter. In case of homicidal death he must have noticed some mark of violence on the floor of the bath room. He visited the spot immediately after the occurrence. It is, therefore, normally expected that he should have noticed and noted some remarkable features if any which could have suggested the implication of the accused. Before the registration of the case on the basis of the report lodged by P.W. 6 there was an entry as Hirakud P.S. Case No. 75 dated 26.8.96 which was entered by the S.I. of police on the information of P.W. 8 which he of course disowned. The defence has suggested to P.W. 17 that Lingaraj has sent a V.H.F. message to Patkura P.S. in order to intimate the parents of the deceased about the death of Bhagabati. Of course, P.W. 17 had pleaded ignorance about it. At this stage it is desirable to refer the evidence of P.W. 8 who was a co-villagers of P.W. 7. He has claimed to have visited the house of the appellants more often than not. Particularly, 13 to 14 days preceding the incident he visited the house of Lingaraj and met Bhagabati and found her in morose and depressed mood. Therefore, in his anxiety he ascertained the reason to which she allegedly replied that because of not providing sufficient dowry articles, she has been subjected to mental torture. In cross-examination it is brought out that he did not state this before the police to have visited the house of Lingaraj 13 to 14 days prior to the death of Bhagabati and on his return to the village he intimated to her father and brother about the mental condition. Turning to the evidence of P.W. 17 it is found that such statement has not been made during investigation. Therefore, it can be safely concluded to be a subsequent development just to appear as true the case of prosecution. On 26th August, 1996 he was also immediately informed by the appellants about the death of Bhagabati. Accordingly he visited Burla Hospital. He also verified that a V.H.F. message about the death had already been sent to Patkura Police Station, but subsequently he further noted that it was sent to a wrong destination. It is not stated by the prosecution to which destination the V.H.F. message was sent about the death of Bhagabati. Therefore, one can normally expect that it must have been sent in the correct address by the appellants after such unfortunate incident of death had taken place. Now turning to the evidence of P.W. 7 it is gathered that nowhere he has stated that Lingaraj had ever demanded dowry articles. It was alleged that the father of Lingaraj used to demand Rs. 30,000/- or a two-wheeler. To verify such statement we are to examine the evidence of P.W. 17 and it is found that P.W. 7 did not whisper a word about the demand of Rs. 30,000/- or a Motor Cycle in lieu thereof. Therefore, it also appears to us to be a subsequent development. P.W. 11 claimed to have gone inside the house of appellants on 24.8.96 at about 5.00 P.M. after having learnt from P.W. 10 who asked him to go to their house. At that time he found the appellant Kumari Gourilaxmi Mahakul holding a rasi and a Paniki. The other two appellants, namely, Lingaraj and his mother were removing the body from the bath room and made her lie on a cot. Such statement, however, is not capable of bringing any incriminating material against the appellants. Holding of a Paniki and a rope by the appellants might be after the

occurrence. Appellant Umakamini Mahakul had taken the Paniki and cut the rope from the neck of Bhagabati. P.W. 16 was the Professor & Head of Department of F.M.T. Department of Burla Medical College Hospital. He conducted the autopsy over the deadbody of the deceased and found the following injuries :

1. Abrasion 2" x 1/2 cm. on the great toe right side at the terminal phalex.
2. Small abrasions each 1/2z cm. on the left great toe, second toe and third toe.
3. Small abrasion 1/4 cm. on great toe close to base.
4. Small abrasion 1/4 cm. x 1/4 cm. on the right great toes near base.
5. Ligature mark /12 cm. width on the neck commencing from right border of thyroid cartilage. On the middle runs down to the left side on its lateral side then run upwards obliquely 6 1/2 cm. below the mastoid upto the posterior border of right stornemastoid muscle. Base of the ligature mark is hard and permenctide margine are echomised."

There was no injury on thyroid cartilage and treachea was in tact. No mark of ligature on the right side. Injuries 1 to 4 might have been caused due to friction against rough and hard substance. Death was due to asphyxis caused by ligature around the neck. The Medical Officer was not sure about the cause of death. In case of ligature mark caused by suicidal hanging, normally, the mark could be situated above the thyroid cartilage. In the instant case it was across the thyroid cartilage. The possibility of ligature mark is homicidal cannot be ruled out. The possibility of death due to suicide also cannot be brushed aside. In case of homicidal death there would be further injuries inside the neck muscles. In this case no such injuries were noticed. It is stated in the book "The Essentials of Forensic Medicine and Toxicology" by Rao on the topic "Ligature Mark" as follows :

"Ligature Mark : This depends on the nature and position of the ligature used, and the time of suspension of the body after death. If the ligature be soft, and the body be cut down immediately after death, there may be no mark. Again, the intervention of a thick and long bead or clothes on the neck may lead to the formation . of a slight mark only.

Situation of the Mark: The mark is usually situated above the thyroid cartilage between the larynx and the chin, and is directed obliquely upward following the line of the mandible (lower jaw) and interrupted at the back or may show an irregular impression of a knot, reaching the mastoid processes behind the ears towards the point of suspension. The mark may be found on or below the thyroid cartilage, especially in cases of partial suspension. It may also be circular if a ligature is first placed at the nape of the neck and then its two hands are brought horizontally forward and crossed, and carried upward to the point of suspension from behind the angle of the lower jaw on each side. The mark will be both circular and oblique if a ligature is passed round the neck or more than once, here there may be evidence of skin bruises whenever it is caught between the ligatures. Near the position of the knot, it is like an inverted "V"."

In case of homicidal strangulation in addition to ligature mark or finger mark there is probability of struggle mark of violence on the other part of the body. In this case the injuries only on the legs had been noticed which would suggest that while struggling for life the deceased must have received such injuries on rubbing against a hard substance. In case of partial hanging the deceased might have committed suicidal hanging in a standing position. She must have died by committing suicide by justing bending knees by reducing the standing height as a reason the toes of both the feets must have come in contact with the ground which were hard and rough surface. On dissection no finger injury like contusion of muscles particularly fracture of thyroid cartilage in the process of strangulation has been noticed. Although in the case of suicide saliva must have dribbled, but due to partial suspension of the body asphyxia process might be slow and gradual as a result dribbling of saliva was absent. The Medical Officer (P.W. 17) also was not certain that it was a homicidal death. In this case, on a careful study of the evidence of P.W. 7 it has appeared that he was not sure as to the cause of death. His evidence rather in no uncertain terms postulates more than one possible circumstance. It has been further elicited that it depends upon other evidence to connect whether it was a case of strangulation by the appellants. But in the instant case the other evidence is quite insufficient to hold that deceased Bhagabati was strangled by the appellants. In this regard a recent judgment can be relied upon reported in (2002) 22 OCR 419 in the case of Baburam -V- State of Madhya Pradesh. From the rationale of the judgment it has appeared that where a doctor conducting post-mortem examination would not be certain with regard to the cause of death and there have been no other connecting link placed by the circumstances, it would be hazardous to convict the appellants for causing death of the victim. Furthermore, there were six accused charged u/s 302/34, IPC out of whom one is already dead and two of them have been acquitted. It is, therefore, difficult to come to a definite conclusion as to who was/ were responsible for the death of Bhagabati. In another case reported in 1999 C.L.R. 627 in the case of Mohd. Zahid-V- State of Tamil Nadu the Supreme Court held :

"We are aware of the fact that sufficient weightage should be given to the evidence of the doctor who has conducted the post-mortem, as compared to the statements found in the text books, but giving weightage does not ipso facto mean that each and every statement made by a medical witness should be accepted on its face value even when it is self-contradictory. This is one such case where we find that there is a reasonable doubt in regard to the cause of death of Jabeena and we find it not safe to rely upon the evidence of P.W.8, solely, for the purpose of coming to the conclusion that Jabeena's death is proved by the prosecution to be homicidal.

*** *** *** Motive being a double-edged weapon, could cut both ways-helping or harming or harming both the prosecution and the defence.

*** *** *** Aware as we are of the fact, a budding life came to an unfortunate

premature end, pur jurisprudence will not permit us to base a conviction on the basis of the evidence placed by the prosecution in this case and the benefit of a reasonable doubt must be given to the appellant.

16. On a careful reading of the judgment we found that the facts of the above case are somewhat similar to that of the present case. Suspicion however strong it may be cannot take the place of proof. Thus on a careful reappraisal of the evidence we could not find that the prosecution was able to prove its case against the appellants to make them responsible for commission of murder of Bhagabati. Therefore, they are acquitted of the charge under benefit of doubt.

17. Accordingly the appeal is allowed, the conviction and sentence passed thereunder are hereby set aside. They be set at liberty forthwith.

Ch. P.K. Misra, J.

18. I agree.