

(2003) 08 OHC CK 0020
In the Orissa High Court
Case No : Criminal Appeal No. 367 of 1992

Benumadhab Padhi Mohapatra

APPELLANT

Vs

State of Orissa

RESPONDENT

Date of Decision : 28-08-2003

Acts Referred:

Dowry Prohibition Act, 1961 — Section 4
Penal Code, 1860 (IPC) — Section 34

Citation : (2004) CLT 63 (Suppl CrI) : (2004) CriLJ 505 : (2003) 26 OCR 663 : (2003) 2 OLR 538

Hon'ble Judges : A.S. Naidu, J

Bench : Single Bench

Advocate : D. Nayak, for the Appellant; Addl. Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

A.S. Naidu, J.—The order of conviction and sentence passed in Sessions Trial No. 21/49 of 1991 by the learned Additional Sessions Judge, Balasore convicting the three appellants u/s 498-A read with Section 34, IPC read with Section 4 of the Dowry Prohibition Act and sentencing each of them to undergo rigorous imprisonment for three years u/s 498-A, IPC only, is challenged in this appeal.

2. Bereft of all unnecessary details, the facts necessary for appreciating the case are as follows :--

An FIR was filed by P.W. 1 on 31-5-1990 at Simulia Police Station alleging that his daughter Gayatri alias Mami who had been given in marriage to appellant No. 1 on 12-3-1990 expired on 28th May, 1990 and that he suspected that the death of his daughter was due to dowry torture. It was alleged in the FIR that at the time of marriage, as per the denial of the bridegroom party, a cash of Rs. 8,000.00 was given to them towards marriage expenses along with other articles like a T.V., ornaments, etc. It was further alleged that deceased Gayatri was put to torture soon after the marriage on demand of further dowry such as a cash of

Rs. 20,000.00 towards study expenses of appellant No. 1 Benumadhab, a Rajdoot motorcycle, a land at Balasore Town with a house standing thereon and also five acres of cultivable land. The father and mother of the deceased bride, namely, P.Ws. 1 and 4, though agreed to fulfil the aforesaid demand, they sought for some time. But in spite of such promise, the bride was subjected to untold torture and ultimately she was done to death on 28th May, 1990.

3. The three appellants, being the bridegroom, his mother and father respectively, were attested and they faced trial in S. T. No. 21/49 of 1990 for alleged commission of offences under Sections 498-A/304-B/306/34 IPC along with Section 4 of the Dowry Prohibition Act.

4. To substantiate their case, prosecution examined as many as twelve witnesses, including a doctor and the investigating officers. The FIR, seizure-lists, post-mortem reports were marked as Exts. 1 to 20. Some bottles and torn saree seized from the house of the accused-appellants were marked as M.Os I to III. Out of the witnesses examined by prosecution, P.W. 1 was the informant who was the father of the deceased, P.W. 2 was a doctor, P.W. 3 was a Constable who had accompanied the dead body, P.W. 4 was the mother of the deceased, P.W. 5 was an independent witness and a co-villager, P.W. 6 was another co-villager, P.W. 7 was an advocate who was consulted by P.W. 1, P.W. 8 was the Head Master of a school who proved the age of the deceased, P.W. 9 was the investigating officer, P.W. 11 was another investigating officer and P.W. 12 was the Dy. S. P. who supervised the investigation.

5. The plea of defence was a clear denial. In their statements recorded u/s 313 Cr PC the accused persons also took the plea that the father of the deceased had married P.W. 4, a scheduled caste lady. This fact was kept secret and after marriage of the deceased when this fact came to light, out of shame the deceased committed suicide by setting fire to her person after sprinkling kerosene. To substantiate such plea and to prove that there was absolutely no demand for dowry, defence examined seven witnesses and exhibited several letters besides the dying declaration of the deceased before the doctor.

6. The learned Additional Sessions Judge after a thread-bare discussion of the evidence, both oral and documentary, came to the categorical finding that Gayatri, as admitted by her in her dying-declaration, committed suicide due to the negligence shown to her by her parents and expressed his inability to hold the accused persons guilty u/s 304-B/34 IPC. For the same reason also he did not find the accused persons guilty u/s 306 IPC. But then on the basis of the evidence of P.Ws. 1, 4, 5, 6 and 8 as well as the letter Ext. 4, the Court below held that the accused persons one and all demanded dowry and had accepted the same at the time of marriage. On the basis of such finding he held all the three appellants guilty under Sections 498-A/34 IPC and 4 of the Dowry Prohibition Act and convicted them thereunder. However the trial Court while sentencing the appellants for conviction u/s 498-A/34 IPC, did not award any separate sentence for conviction u/s 4 of the Dowry Prohibition Act.

7. Mr. Nayak, learned counsel for the appellants, took the pain of placing the entire oral evidence before me. He also forcefully submitted that the victim was alive for some time and she had made dying declaration (Ext. B) before the Tahsildar and a doctor, who have been examined as D.Ws. 1 and 2 respectively, specifically stating that she committed suicide because she was neglected by her parents. The said dying declaration as well as the evidence of the aforesaid defence witnesses were accepted by the Court below and all the appellants were acquitted of the charges under Sections 304-B and 306 IPC. According to Mr. Nayak, after the acquittal of the accused persons of the charges under Sections 304-B and 306 IPC, their conviction u/s 4 of the Dowry Prohibition Act was not just and proper. In support of such contention, Mr. Nayak relied upon a decision of the Supreme Court in the case of Sakhi Mandalani v. State of Bihar (2000) 18 OCR 663.

8. Challenging the conviction of the appellants under Sections 498-A IPC. Mr. Nayak submitted that as there was absolutely no specific evidence that after the marriage the deceased was subjected to any torture, the Court below erred in law in convicting the appellants under the charge. According to Mr. Nayak, none of the ingredients of Section 498-A IPC were established by the prosecution and as such the conviction of the appellants under the said charge was based on mere surmises and conjectures and was contrary to the evidence on record which therefore cannot be sustained.

9. Learned counsel for the State, on the other hand, drew my attention to the oral evidence of P.Ws. 1, 4, 5, 6 and 8 and submitted that there are enough evidences to reveal that the appellants demanded dowry even after the marriage. The evidence of the prosecution witnesses in this regard has not been countenanced nor shaken in cross-examination. The father, mother and the neighbouring villagers could only be the witnesses to the demand of dowry. On the face of such evidence which was corroborated by the letter Ext. 3, the Court below has rightly arrived at the conclusion that the offence u/s 498-A IPC was committed by the accused persons and has rightly convicted them under the said section, and any submission to the contrary is unfounded and it is a fit case where the conviction and sentence of the appellants should be upheld.

10. Admittedly the trial Court has acquitted the appellants of the charges under Sections 304-B and 306 IPC. The State has not preferred any appeal against the acquittal of the appellants of the said charges. Thus the finding and conclusion arrived at by the Court below with regard to the said offences has become final. Now the only question that needs scrutiny in this appeal is whether after acquittal of the appellants of the charges u/s 304-B and 306 IPC, their conviction u/s 498-A IPC and Section 4 of the Dowry Prohibition Act can be sustained.

11. Of late, dowry has become a social menace. It is a vice which has not even spared the rich, cultured and educated masses. Even the urban elite torture their better-halves for dowry. Dowry is a disease which has eaten away the moral values on which our society once upon a time thrived. A time has come when the

Courts have to be firm so as to eradicate the disease. The Legislature in its wisdom has not only enacted Acts, but also suitably amended the Indian Penal Code so as to deal with the aforesaid menace. But then, while dealing with the prosecution relating to such offences the Court cannot close their eyes to the fact that the provisions are also misused by unscrupulous litigants to satisfy their personal vendetta. Often being enraged, innocent relatives are roped in just for the sake of harassment and taking revenge. In view of the aforesaid scenario the Court has to be careful while dealing with cases involving dowry torture.

12. Section 498-A IPC under which all the appellants have been convicted stipulates that whoever being the husband or the relative of the husband of a woman subjects such woman to cruelty shall be punished for commission of offence under the said section. The basic ingredient of Section 498-A IPC is "cruelty" and "harassment". The elements of cruelty have been classified as follows :--

- (1) Any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide; or
- (2) any wilful conduct which is likely to cause grave injury; or
- (3) any wilful act which is likely to cause danger to the life, limb or health, physical or mental of the woman.

13. Apart from cruelty, the other basic ingredient stipulated u/s 498-A IPC is harassment.

So far as criminality attracting the word harassment is concerned, it is independent of cruelty and becomes punishable, if --

- (1) the harassment to the woman is with a view to coerce her or any person related to her to meet unlawful demand for any property or valuable security, or
- (2) the harassment is on account of failure by her or any person related to her to meet such demand.

In the case at hand, the Court below while dealing with the charges under Sections 304-B and 306 IPC, after scanning the evidence, both oral and documentary, has arrived at the conclusion that no cruelty was meted out to the deceased so as to drive her to commit suicide. At the cost of repetition it may be stated that the said finding has not been challenged by the State and has become final. So far as harassment to the deceased by the appellants is concerned, after going through the evidence of all the witnesses, the only irresistible conclusion which can be arrived at is that the prosecution has completely failed to adduce any iota of evidence that the deceased was at any time subjected to harassment by the appellants on demand of dowry. It has to be always kept in mind that for establishing an offence u/s 498-A IPC, harassment should be co-related to demand of dowry. In the absence of any evidence establishing the said basic ingredient, according to me, the conviction

of the appellants of the charge u/s 498-A IPC cannot be sustained.

14. P.W. 1 and P.W. 4, the father and mother of the deceased respectively, though alleged that their daughter was tortured on account of demand of dowry, the same was disproved by the dying declaration of the deceased which was recorded by the treating physician in presence of an Executive Magistrate soon before the death. The dying declaration Ext. B clearly reveals that the victim had not breathed a word with regard to any "torture" or "harassment" by the appellants on her, and rather attributed the cause of death to her parents. The only two independent witnesses examined by the prosecution have not stated anything with regard to harassment or torture meted out to the deceased by the appellants. On the other hand they have stated that appellant No. 1 husband of the deceased expressed before them that his in-laws were not paying a cash of Rs. 20,000.00, a house at Balasore Town with five decimals of land, a motor-cycle and five acres of cultivable land. But surprisingly P.W. 5 never disclosed nor intimated the said fact to any other person nor did he communicate the same to the father of the deceased. He did not remember the date on which such demand was made by appellant No. 1. P.W. 6 also reiterated the same fact, but then he also neither communicated such fact to the parents of the deceased nor to any other person. The statements made by these witnesses were bald assertions. Last but not the least, the aforesaid witnesses did not state the said fact to police when they were examined u/s 161 Cr. P.C. All these factors throw a cloud of suspicion as to the truthfulness of the statements made. Even otherwise, none of these witnesses stated anything regarding demand of dowry so far as appellants 2 and 3 were concerned and thus there is absolutely not a single iota of evidence as to either demanding dowry, torture or harassment meted out to the deceased by appellants 2 and 3, that too relating to demand of dowry, and therefore, the conviction of these two appellants under no circumstances can be sustained.

15. So far as appellant No. 1 is concerned, it appears that he was a frustrated man. In search of job he had gone to Golf where he met with an accident and with much difficulty had returned back home. There are also some evidences to show that he needed treatment, both mental and physical. He was roaming about hither and thither. Thus much importance cannot be given to the statements of P.Ws. 5 and 6, more so, when all the three witnesses have not whispered anything about appellant No. 1 subjecting his wife to cruelty or harassment. Thus the substratum of the charge fails.

16. In the case of Pramila Patnaik and Others Vs. State of Orissa, , cataloguing the ingredients of "cruelty", this Court had observed that for maintaining a conviction u/s 498-A IPC, prosecution must prove that the woman was subjected to cruelty or harassment by her husband or any relative of her husband in regard to non-fulfilment of the demand of any property or valuable security. This ingredient has not been satisfied in the present case. In the absence of any evidence as to subjecting the deceased to cruelty or harassment for or in connection with demand of dowry, only on the basis of some vague and

inconsistent statements of interested witnesses like parents of the deceased, and in absence of any cogent evidence of any near relative or neighbour of the parties about cruelty or harassment meted out to the deceased by the accused persons in relation to demand of dowry no conviction u/s 498-A IPC or u/s 4 of the Dowry Prohibition Act can be sustained.

16A. Here is a case where the defence not only examined the doctor who attended the deceased at her death bed and recorded her dying declaration Ext. B, but also examined the Executive Magistrate in whose presence the dying declaration of the deceased was recorded, as D.Ws 1 and 2. Both these witnesses have unambiguously stated that the deceased at the time of recording Ext. B was in her full sense and was able to talk clearly. She stated before them that nobody had tortured her and that she had burnt herself as her parents did not take care of her. The priest who was the mediator in the marriage was examined as D.W. 4 and a local gentleman who had attended the marriages was examined as D.W. 5. Both of them had clearly stated that no dowry was demanded by the bridegroom side. A cumulative assessment of the evidence adduced in the case thus inspires confidence on the defence plea.

17. On an analysis of the evidence, both oral and documentary, and on hearing the learned counsel for both sides at length, according to me the order of conviction and sentence passed against the appellants for commission of offences under Sections 498-A and 4 D.P. Act cannot be sustained in the absence of any cogent evidence regarding "torture" or "harassment" to the victim woman vis-a-vis demand of dowry and the same is to be set aside and the appeal is bound to succeed.

18. In the result, the Criminal Appeal is allowed. The impugned order dated 20-10-1992 passed by the learned Additional Sessions Judge, Balasore in Sessions Trial No. 21/49 of 1991 convicting the appellants under Sections 498-A/34. IPC and Section 4 of the Dowry Prohibition Act and the sentence passed against the appellants are set aside. All the appellants are acquitted of the charges levelled against them. The bail-bonds of the appellants be discharged.

Criminal Appeal is allowed.