

(2007) 07 OHC CK 0039

In the Orissa High Court

Chandra Chudamani Patnaik and Others

APPELLANT

Vs

State of Orissa

RESPONDENT

Date of Decision : 31-07-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313

Dowry Prohibition Act, 1961 — Section 4

Penal Code, 1860 (IPC) — Section 306, 34, 498A

Citation : (2007) 104 CLT 786 : (2008) 1 DMC 457 : (2007) 2 OLR 356

Hon'ble Judges : Pradip Mohanty, J

Bench : Single Bench

Judgement

Pradip Mohanty, J.—This criminal appeal is directed against the judgment and order dated 4.10.1996 passed by the learned Second Addl. Sessions Judge, Berhampur in Sessions Case No. 53 of 1995 (S.C.No. 275 of 1995 GDC) whereby the appellants have been convicted under Sections 498A IPC and 4 of the Dowry Prohibition Act read with Section 34 IPC and sentenced to undergo imprisonment for two years u/s 498A IPC and one year u/s 4 of the Dowry Prohibition Act; the sentences to run concurrently. Initially, the appeal was preferred by three appellants. During its pendency, appellant No. 2-Saraswati Patnaik having died, the appeal as against the said appellant has abated by order dated 16.5.2007. Now, the appeal is confined to appellants 1 and 3.

2. The case of the prosecution is that the marriage between Manoranjan Patnaik (appellant No. 3) and the deceased (Mamatamayee Patnaik) was solemnized on 05.8.1994. Appellant No. 1-Chandra Chudamani Patnaik and appellant No. 2-Saraswati Patnaik (since dead) are the father and mother respectively of appellant No. 3. At the time of settlement of the marriage appellant No. 1 demanded cash of Rs. 50,000/-, a Bajaj Chetak scooter and other household articles as dowry. After prolonged negotiation, it was settled that a cash of Rs. 35,000/-, a Bajaj Scooter and other household articles would be given as dowry. Appellant No. 1 received cash of Rs. 15,000/- 3 to 4 days prior to the marriage, Rs. 5,000/- on the date of marriage and the balance amount of Rs. 15,000/- a

few days after the marriage. The appellants were not satisfied with the said amount of dowry. Therefore, they teased the deceased and subjected her to physical and mental torture on the ground that she had not brought a colour T.V., a refrigerator and a gas oven as dowry and ultimately the deceased was forced to commit suicide. On receipt of such information, the police registered a case, proceeded with the investigation and after closure of the same submitted charge sheet against the appellants under Sections 498A/306 IPC and Section 4 of the Dowry Prohibition Act read with Section 34 IPC.

3. The appellants took the plea of denial. They denied to have demanded or received anything from the deceased or her parents as dowry. Their further plea was that the mother of the deceased (informant) wanted to postpone the marriage for want of money and appellant No. 1 had advanced her cash of Rs. 15,000/- as a friendly gesture in order to enable her to perform the marriage. The informant returned the said amount of Rs. 15,000/- in the shape of bank draft a few days after the marriage. The informant had given the deceased in marriage with appellant No. 3 against her will and the deceased never reconciled herself to this marriage and ultimately committed suicide,

4. In order to prove its case, the prosecution examined as many as 14 witnesses and proved 29 documents marked as Ext. 1 to 29 and six material objects. The appellants examined none in support of their plea, but relied on 20 documents marked as Ext. A to Ext. T.

5. The learned Addl. Sessions Judge, who tried the case, by his judgment dated 4.11.1996, while acquitting the appellants of the charge u/s 306, IPC, convicted them u/s 498A IPC and Section 4 of the Dowry Prohibition Act and sentenced each of them to undergo rigorous imprisonment for two years u/s 498A IPC and rigorous imprisonment for one year u/s 4 of the Dowry Prohibition Act with the direction that both the sentences shall run concurrently.

6. Mr. Panda, learned Counsel for the appellants, submitted that, as is evident from the impugned judgment, the trial Court found the appellants guilty u/s 498A IPC and Section 4 of the Dowry Prohibition Act relying upon the evidence of P.Ws. 1, 8, 12 and 13 as well as the letter (Ext. 11) said to have been written by the deceased. P.W.1 Dhoba Khatei says that he had accompanied Satyamitra Patnaik (P.W.13) and one Gopal Krushna Patnaik to the house of the appellants with the bank draft of Rs. 15,000/-. But prosecution withheld said Gopal Krushna Patnaik and did not examine him as a witness, and the evidence of Satyamitra Patnaik (P.W.13) materially differs from the evidence of P.W.1 with regard to demand of dowry and compliance thereof. From the suicidal note (Ext. 13) it is crystal clear that the deceased was dissatisfied with her marriage and felt lowered down and frustrated considering appellant-Manoranjan unworthy to be her husband. When the learned trial Judge relying on Ext. 13 acquitted the appellants of the charge u/s 306 IPC, he should not have utilized the same for recording the conviction of the appellants u/s 498A IPC and Section 4 of the D.P. Act. Further, P.W.5, who is an immediate neighbour of the appellants as well as

the deceased, did not depose anything about the alleged torture meted out to the victim. The reliance placed by the trial Court on Ext. 11 to conclude that there was demand for dowry after marriage is improper since contents of the said Ext. 11 were never placed before the appellants when their statements were recorded u/s 313 Cr.P.C. It is the settled position of law that materials which have not been put to the accused in their examination u/s 313 Cr.P.C. cannot be utilized against them. In this context, the counsel for the appellants relied upon the decision reported in 1994 (7) OCR 332 (Babulu Kundu v. State of Orissa).

7. Mr. Behera, learned Addl. Government, vehemently contended that Ext. 11 reveals that the appellants repeatedly subjected the deceased to cruelty for more dowry. P.Ws. 2, 3, 4 and 8 are close relations of the deceased. Their evidence regarding teasing and subjecting the deceased to cruelty to extract more dowry has been amply corroborated by the documentary evidence, i.e., Ext. 11. He further submitted that the evidence of P.Ws. 1, 8, 12 and 13 with regard to handing over the bank draft to appellant No. 1 is sufficient to hold the appellants guilty and there is no infirmity in the impugned judgment and order of conviction passed by the trial Court.

8. Perused the LCR. Exts. 11 and 13 are vital documents written by the deceased herself. But no question was put to the accused-appellants u/s 313 Cr.P.C. with regard to Ext. 11. Law is well settled that materials, which have not been put to the accused in their examination u/s 313 Cr.P.C., cannot be utilized against them. Ext. 11 being, a vital document should have been specifically brought to the notice of the accused-appellants during their examination u/s 313 Cr.P.C. In view of the above, reliance cannot be placed on Ext. 11, From the evidence of P.Ws. 1, 2, 3, 4 and 8, it is crystal clear that there was demand of dowry by appellant No. 1 -Chandra Chudamani. P.W.11 specifically stated about the handing over a draft of Rs. 15,000/- to appellant No. 1- Chandra Chudamani. P.W.2 stated in his evidence that the appellants teased deceased. He also specifically stated that P. W. 13-Satyamitra Patnaik went to the house of the accused with cash of Rs. 15,000/- and delivered the same to appellant No. 1-Chandra Chudamani. P.W.3 stated that the father-in-law of the deceased was not happy with the dowry articles taken by the deceased. P.W.4 stated about the demand of scooter and money by the appellants. P.W.8 is the mother of the deceased and the informant. She stated about the demand of dowry by appellant No. 1 and about the ill-treatment meted out of the deceased by her in-laws. P.W.13 also stated about the demand of dowry by appellant No. 1 and about his handing over an amount of Rs. 15,000/- to appellant No. 1. From the evidence of the prosecution witnesses it reveals that there was demand of dowry by appellant No. 1-Chandra Chudamani and he received the cash and other articles. But there is no specific evidence against appellant No. 3 with regard to demand of dowry.

9. There is no specific material with regard to torture meted out to the deceased on account of non-fulfilment of demand of dowry. Even P.W.5, a neighbour, has not stated anything about torture by the appellants. In view of the above, the

prosecution has failed to establish a case u/s 498A IPC against appellants 1 & 3.

10. For the above reasons, this Court sets aside the conviction and sentence of both the appellants u/s 498A IPC. However, this Court upholds the conviction of appellant No. 1-Chandra Chudamani u/s 4 D.P.Act, but the sentence of one year's imprisonment, as awarded to him by the trial Court is reduced to the period already undergone.

11. In the result, this appeal is allowed in part to the extent indicated above.