



IN THE HIGH COURT OF ORISSA AT CUTTACK

CRA No.280 of 1995

(In the matter of an application under Section 374 of the Criminal Procedure Code, 1973)

1. *Indramani Naik (dead)*

2. *Saria Naik*

3. *Pramod Kumar Naik*

.....

Appellants

-Versus-

State of Orissa

.....

Respondent

For the Appellants : Mr. S. Panda, Advocate

For the Respondent : Mr. A.K. Apat, AGA

CORAM:

THE HONOURABLE SHRI JUSTICE SIBO SANKAR MISHRA

Date of Hearing: 17.02.2026 : Date of Judgment: 26.02.2026

S.S. Mishra, J. The appellants have assailed the judgment of conviction and order of sentence dated 13.10.1995 passed by the learned Additional Sessions Judge, Jajpur in Sessions Trial No.220/20 of 1994, whereby they have been convicted for the offences punishable under Sections 498A/304B/34 of the IPC read with Section-4 of the D.P. Act and sentenced to undergo R.I. for six



months for the offence under Section 4 of the D.P. Act, to undergo R.I. for two years for the offence under Section 498A of IPC and to undergo R.I. for seven years for the offence under Section 304-B of IPC.

2. Heard Mr. S. Panda, learned counsel appearing for the appellants and Mr. A.K. Apat, the learned Additional Government Advocate appearing for the Respondent-State.

3. The prosecution case in terse and brief is that Harekrushna Sahu (P.W.2) lodged a written report before the Inspector I/C of Jajpur P.S. alleging that on 23.05.1993, his daughter was given in marriage with accused Pramod Naik in the month of February, 1991. For the marriage, the accused persons had demanded cash of Rs.50,000/- along with 12 tolas of gold ornaments, Godrej Almirah, T.V., Sofa set, Palanka etc., out of which cash of Rs.35,000/- was paid and other articles were also given except T.V. and he assurance was given to pay the balance amount of Rs.15,000/- and T.V. later. But, immediately after the marriage, as those two items could not be given, the accused persons started torturing physically and mentally to her daughter, which finally led her to commit suicide by taking poison.



4. On the basis of the written report of the informant, police registered the case and investigation was conducted and charge sheet was filed in the present case against the accused persons for the alleged commission of offence, as mentioned above. The accused persons took stance of complete denial and claim trial. Accordingly, they were put to trial on the charges, as mentioned above.

5. The prosecution has examined eleven witnesses in support of its case and exhibited as many as nine documents; and the defence has also examined three witnesses

P.W.1 was the doctor. P.W.2, is the father of the deceased and was the informant in the present case. P.Ws.3 and 4, 9 were the independent witnesses; P.Ws.5 and 6 are the brothers of the deceased; P.W.7 was a neighbour of the deceased; P.Ws.8 and 10 were the two IIC of Jajpur Police Station; and P.W.11 was the S.I. of Police of Jajpur P.S., who investigated the case.

6. This appeal is pending since 1995 against the impugned judgment and order dated 13.10.1995 passed in Sessions Trial No. 220/20 of 1994. During pendency of the appeal, the appellant no.1 has



expired. Therefore, the appeal against him stood abated vide order dated 24.07.2024 in the absence of any application under Section 394 Cr.P.C. by his L.Rs or next friends. The report sought by this Court regarding the wellbeing and status of other appellants reveals that both the appellants are alive. Accordingly, the appeal was heard at length on various dates of hearing and eventually on 10.02.2026, parties were directed to file their written notes of submission and the parties have also filed their written notes of submission. The appeal needs to be considered qua appellants nos.2 and 3.

7. The case of the prosecution hinges upon the evidence of P.Ws.2, 4, 5 and 6. In so far as P.W.7 is concerned, he has been completely disbelieved by the learned trial court and his testimony has been discarded being an interested witness.

8. P.W.2, who is the father of the deceased, is the informant in the present case. He in his testimony made specific allegations and attributed demand of dowry made by only appellant no.1. He has deposed that his daughter Kaberi had married to appellant no.3 on 21.02.1994. The appellant no.1-Indramani had demanded Rs.50,000/- as dowry for the said marriage besides the demand of T.V., almirah,



utensils etc., but he could only arrange Rs.35,000/- cash and paid the same. The remaining amount of Rs.15,000/- and other household articles demanded was promised to be paid after the marriage. But due to the financial constraint he could not arrange the same and fulfilled the demand made by appellant no.1 and he sought some time to arrange the same. However, the accused persons mis-treated his daughter for non-fulfillment of the demand. In the year 1993, on Savitri Amavasya he had sent the customary articles through Satyasiba (P.W.5), the brother of the deceased. He further deposed that when P.W.5 went to the house of the in-laws of his daughter, the mother in law (Appellant no.2) abused P.W.5 and asked him to take away all the customary articles unless they fulfill the demand. However, in the cross examination, the said witness stated that he has not mentioned the said fact before the police or in the FIR Ext.2 that even P.W.5 had gone to the house of the accused persons. He further deposed that after the death of his daughter, he filed the FIR Ext.2. After the post mortem, the police had given zima of four piece of gold and bronch bangles of the deceased to him which was given to her daughter during the marriage. Ext.3 was the Zimanama. In the



cross examination, the said witness, however, stated that he was one of the accused in Pakua murder case, which is pending trial and some of the relations of the accused persons were the witnesses to that case.

P.W.4, who is one of the independent witness, has stated that at the “Lagna” function of the marriage between Kaberi and appellant no.3, appellant no.1 demanded Rs.50,000/-, color T.V. and other household articles. It is stated that P.W.2 informed him that he has paid Rs.33,000/- to appellant no.1 and appellant no.1 asked P.W.2 to make good the remaining demanded amount. He has made omnibus and general allegations against the other two appellants regarding the torture meted out to the deceased. In the cross examination, the said witness has given a contradictory figure in so far the part payment that was made to appellant no.1 in lieu of demand of dowry of Rs.50,000/-.

P.W.6 is the brother of the deceased who has also made similar allegation and deposed that on Savitri Amavasya day customary articles were sent to the house of his sister. Savitri Amavasya in 1993 was celebrated two days. In the cross examination, however the said witness has very categorically stated as under:-



“The demand was made at the time of marriage. At the time of demand, my father and Indramani, relations of accused Indramani and our relations were present. I was present at the time of demand. Accused Pramod and mother were not present at the time of demand. At the time of demand Rs.33,000/- was paid and Rs.2000/- was paid on the date of marriage, which is about 6 to 7 days after the date of demand. A list was prepared for the articles which were given on the date of marriage. The list of the articles was given to accused Indramani. The receipt of the steel almirah and sofa may be with my father. Kaberi must have given about 6 to 8 letter after her marriage and before her death, but we have not preserved the same. The letters contained the torture made to her, but we have not convened any village arbitration about the same. Kaberi used to tell about her grievance before my father, which we have heard. After marriage and prior to her death, Kaberi had come to our house 5 to 7 times. We used to bring Kaberi to our house and used to give some articles and leave her in her in-laws house. I have gone 6 to 7 times to the house of the accused after her marriage. During my presence in the house of accused, Kaberi was not tortured.”

The specific deposition of this witness stating that appellant nos.2 and 3 were not present at the time of demand of dowry made by appellant no.1 is significant because he is a member of the family of the deceased and the prosecution heavily relied upon his evidence.

P.W.5, is also a brother of the deceased. In contrast he has deposed that on Savitri Amavasya day when he went to the house of his sister, the mother in law (appellant no.2) threw the articles and



abused him and asked for the balance amount and T.V. At that time his sister protested, to which her mother in law asked her for taking poison. This part of the evidence of P.W.5 was confronted with by the defence, as he had not stated the same before the police. It appears that this witness has not stated the fact before the I.O. at the time of investigation, which is apparent from the testimony of P.W.10, the I.O. of the case.

P.W.7 was a neighbour of the deceased who has although supported the prosecution in regard to the demand of dowry and the torture; however the learned trial court has rightly disbelieved his version finding him to be an interested witness. He has apparently improvised his version to suit his requirement, which he got exposed from the evidence of P.W.10 the I.O. The said witness in the cross examination has stated as under:-

“3. Sridhar Naik is the brother of accused Indramani Naik. I do not know if Sridhar Naik had filed a criminal case against my husband in the year 90 in 1.C.C.141/90 and in that case accused Indramani deposed against my husband. I also do not know if Govind (my husband) had also filed a complaint case against accused Indramani bearing 1.C.C. No.420/91. So also I cannot say if my husband had filed a case against



accused Pramod and Indramani in I.C.C. 205/90. I do not recollect I had given evidence before S.D.J.M. Jajpur against accused Indramani and Pramod. I also do not know if Bidyaadhar Naik, son-in-law of Indramani had filed a case against my husband bearing G.R. Case No.813/92. I also do not recollect if my husband had filed a G.R. case against accused Indramani Naik bearing G.R. Case No.314/92 and I cannot say if those cases are still continuing. There was litigation between us and the accused regarding land dispute. The land dispute is going on since last 4 to 5 years.”

Since P.W.7 has been entangled in multiple cases with the family of the accused, his improvised version deposed from the witness box has rightly been rejected by the learned trial court, *inter alia*, recording the following findings:-

“14. The main thrust of argument of the learned Advocate for the accused persons is that P.W.7 is most interested witness in this case and what evidence she has given to the I.O. is completely changed and new fact has been stated during her evidence in court. This Witness has only stated to the I.O. that on the date of occurrence while she was returning after attending call of nature, she heard the greaning sound of Kaberi and not stated anything regarding any assault on her by the accused persons. Out of her statement one fact is clear that the accused persons informed her that Kaberi consumed poison. The learned Advocate for the accused persons filed series of certified copies of certain documents showing that her husband and



other relations had filed series of cases against the accused persons and their relations. Though P.W.7 denied knowledge of such facts, but a reference to the certified copies clearly discloses that there are series of litigations pending. So she is an interested witness and she has developed the story which she had not stated to the I.O. regarding assault on Kaberi by the accused persons. So her evidence to that extent can be ignored.”

9. If the entire evidence is appreciated in the right prospectus, it is eminently clear that none of the witnesses have deposed anything specific against the appellant no.3 barring omnibus and general allegation. P.W.6 has very specifically stated in his testimony that appellant nos.2 and 3 have not demanded anything in the name of dowry. In so far as physical or mental torture meted out to the deceased are concerned, nothing specific is attributed to appellant no.3. P.W.1, the doctor in his testimony has confirmed that the death of the deceased was due to organo phosphorous poisoning and asphyxia. The presence of turmeric paste blocking the trachea further indicates a suspicious and agonizing death of the deceased. With minor variations all the witnesses have consistently and in unison have testified that at the time of marriage Rs.50,000/- was demanded by appellant no.1, out of which Rs.35,000/- was paid, although some



witnesses have stated Rs.33,000/- in advance was paid. But the remaining balance of Rs.15,000/- and demand of T.V. etc. has been consistently deposed by all the witnesses to have been demanded by appellant no.1. P.W.5 has made direct attributions against appellant no.2 inciting the deceased to take poison because his father could not fulfill the demand and also stated that the father of the deceased cheated them by not paying the balance dowry amount. Therefore, the evidence on record are writ large against appellant nos.1 and 2 regarding demand of dowry and torture meted out to the deceased for want of dowry. However, nothing prominently is illuminating on the materials on record regarding the complicity and involvement of appellant no.3. The learned trial court appears to have swayed away by the fact that the appellant no.3 being the husband was obviously responsible for the offence. However, the prosecution could not being convincing material to nail the appellant no.3 and prove his guilt.

10. The learned counsel for the appellant has strenuously argued that the evidence of P.Ws. 2, 4, 5 and 6 if read in conjunction the trustworthiness of the same is clearly doubtful because of the inconsistency and contradictions. It is also contended that although



the FIR was registered on 23.05.1993, but it was sent to the Magistrate only on 26.5.1993. Therefore, the findings recorded in para-12 holding that FIR was received from the police station in the Court on 26.05.1993 which is a few yards from the court, as stated by D.W.1 is surely coming under the cloud of doubt. Dispatch number of the police station shows that it was sent on 24.05.1993 having been received at the police station at midnight of 23.05.1993. Therefore, the FIR is antedated, which clearly prejudiced the accused persons. Apart from the same, the conviction and sentence is also questioned on the preliminary ground that the primary witness to the prosecution P.Ws.4, 5 and 6 have materially contradicted in their evidence regarding time and nature of harassment, except making bald and general allegations.

11. To sustain the conviction under Section 304-B of IPC, the following essential ingredients are to establish on record by the prosecution:-

- (1) Death of a woman should be caused by burns or bodily injury or otherwise than under a "normal circumstance";*
- (2) Such a death should have occurred within seven years of her marriage;*



- (3) She must have been subjected to cruelty or harassment by her husband or any relative of her husband;*
- (4) Such cruelty or harassment should be for or in connection with demand of dowry and such cruelty or harassment is shown to have been meted out to the woman soon before her death.*

12. Perspicacious analysis of the evidence on record, it is clear on record that the marriage between the appellant no.3 and deceased (Kaberi) had taken place in the year 1991 and the wife of the appellant no.3 died in the year 1993. The cause of death is beyond normal circumstances. Two days before the death, i.e. on Savitri Amabasya, appellant no.2 has not only insulted P.W.5 by throwing the customary article given to the deceased by her family but also incited the deceased to consume poison stating that her family members have cheated the accused persons. The triggering incident narrated by prosecution witnesses had happened within a close proximity to the death. The death was caused due to poisoning, which is not a natural death. The harassment meted out to the deceased was in connection of demand of dowry. Therefore, all the ingredients as mentioned above stood satisfied to bring home the charge under Section 304-B of IPC against the appellants. However,



in the absence of any specific overt act attributed against appellant no.3 by any of the witnesses, it is not safe to sustain conviction against the appellant no.3. The natural corollary would be that appellant no.3 is entitled to the benefit of doubt, as the prosecution failed to prove the charge under Section 304-B of IPC against appellant no.3 beyond doubt. Accordingly, the judgment of conviction and order of sentence awarded by the learned trial court vide impugned judgment dated 13.10.1995 against appellant no.3, is liable to be set aside. In so far as appellant no.2 is concerned, the prosecution has brought on record cogent, trustworthy and reliable evidence to sustain the charges. Hence, no reprieve could be given to the said appellant.

13. Taking into consideration the entire evidence on record and the competing arguments advanced by both the counsels appearing for the appellants as well as the State, this Court is not inclined to interfere with the impugned judgment of conviction and order of sentence in so far as appellant no.2 is concerned. Accordingly, the judgment of conviction and order of sentence dated 13.10.1995 passed by the learned Additional Sessions Judge, Jajpur in Sessions



Trial No.220/20 of 1994 in so far as appellant no.2 is concerned, is upheld, while the same judgment stand set at naught qua appellant no.3. The bail bond furnished by appellant no.3 stands discharged.

14. Accordingly, the Criminal Appeal is partly allowed and disposed of.

(S.S. Mishra)
Judge

The High Court of Orissa, Cuttack.
Dated the 26th day of February, 2026/Ashok