IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLA No. 433 of 2006
ODHC010012582006

[An application under Section 374 of the Code of Criminal Procedure from the judgment and order dated 23.09.2006 passed by learned Addl. District and Sessions Judge, F.T.C., Nayagarh]

AFR **Prasant @ Pradipta Kumar Mohapatra**

and Another **.....** **Appellants**

-Versus-

State of Orissa **.....** **Respondent**

Advocate(s) appeared in this case through hybrid mode:

For Appellants : Mr. P.K. Moharaj, Advocate

For Respondent : Mr. Satyabrata Mohanty, [Additional Government Advocate]

CORAM:

THE HONOURABLE MR. JUSTICE MANASH RANJAN PATHAK

THE HONOURABLE MR. JUSTICE SASHIKANTA MISHRA

Date of Hearing: 01.09.2026 :: Date of Judgment: 08.09.2026

SASHIKANTA MISHRA, J.

The appellants, Prasant@Pradipta Kumar Mohapatra and Lata Debi Mohapatra being son and mother

respectively, faced trial in S.T. No. 80/90 of 2004-2000 in the Court of the Additional Sessions Judge, F.T.C., Nayagarh for committing dowry death of one Mirabai Dash of village Ranpur. The deceased was the wife and daughter-in-law respectively of the appellants. They were charged under Sections 498-A and 304-B of IPC read with Section 4 of the D.P. Act and in the alternative, under Section 302 of I.P.C. By judgment dated 23.09.2006, the trial Court convicted them under Sections 304-B and 498-A of I.P.C. read with Section 4 of the D.P. Act. For the offence under Section 304-B of I.P.C., Prasant was sentenced to undergo imprisonment for life, while Lata was sentenced to undergo RI for ten years. For the offence under Section 498-A of I.P.C., each of them were sentenced to undergo RI for three years and to pay a fine of Rs.10,000/-, in default whereof to undergo RI for six months. They were further sentenced for the offence under Section 4 of the D.P. Act, to undergo RI for one year and to pay a fine of Rs.10,000/- each, in default whereof to undergo RI for three months. All the sentences were directed to run concurrently.

2. Prosecution case, briefly stated, is as follows.

On 07.12.1996, Prasant@Pradipta Kumar Mohapatra married Mirabai Dash (the deceased) at Dakhinakali Temple, Bhubaneswar, according to Hindu rites and customs. At the time of marriage, appellants and Dayanidhi Mohapatra, father of Prasant, demanded cash of Rs.10,000/-, an HMT wristwatch and gold ornaments from the parents of the deceased, which were given. After the marriage, the deceased was initially treated well in her matrimonial home. However, about six months thereafter, the appellants and Dayanidhi demanded a further sum of Rs.5,000/- as dowry, which could not be fulfilled. On account of such non-fulfilment, they subjected the deceased to physical and mental cruelty by abusing and assaulting her. Whenever the deceased visited her parental house, she complained about the ill-treatment meted out to her by the appellants and Dayanidhi on account of the demand for further dowry. It is further stated that on 04.05.1998 at about 12.30 a.m., the deceased died in her matrimonial home and her dead body was cremated by the accused

persons without informing her parents or brother. On 06.05.1998, after coming to know about her death, her brother, Manmatha Kumar Dash, went to the house of the appellants. Not being satisfied with the explanation offered, he suspected foul play and that the deceased had been killed for dowry and her dead body thereafter cremated to screen the offenders. He, therefore, lodged the F.I.R. On the basis of the FIR, Ranpur P.S. Case No. 62(4) of 1998 was registered under Sections 498-A/304-B/302/201/34 IPC. Upon completion of investigation, charge-sheet was submitted against the appellants along with other accused persons under Sections 498-A/304-B/302/201/34 IPC and Section 4 of DP Act.

3. The defence of the accused persons was one of complete denial and false implication. Defence also took the plea that after the death of the deceased, her brother Manmatha demanded Rs.1,00,000/- from them and as they failed to pay the amount, they were falsely implicated. It was their further plea that the deceased had committed suicide by hanging as she was unable to tolerate the suffering

caused by eczema, from which she had been suffering for a long time.

4. To prove its case, prosecution examined five witnesses and exhibited three documents. Defence, on the other hand, examined two witnesses and exhibited two documents.

5. After analyzing the evidence on record, the trial Court held that the deceased was the legally married wife of Prasant and daughter-in-law of Lata and that, at the time of marriage, cash of Rs.10,000/-, gold ornaments and other household articles had been given as dowry. It also held, mainly relying on the evidence of P.Ws.1 and 2, that the appellants had demanded a further sum of Rs.5,000/- as dowry and had subjected the deceased to cruelty on account of non-fulfilment of the demand. It also held that the deceased had died an unnatural death within seven years of her marriage and she had been subjected to cruelty in connection with the demand for dowry soon before her death. As such, it invoked the presumption under Section

113-B of the Indian Evidence Act and held that the appellants had failed to rebut the presumption. The defence plea that the deceased had committed suicide by hanging on account of eczema was also not accepted by it. Accordingly, they were convicted and sentenced as stated hereinbefore. However, the trial Court found that the prosecution had failed to establish the charge under Section 201 of IPC. against the other accused persons and acquitted them of the charge.

6. Heard Mr. P.K. Moharaj, learned counsel for the Appellants and Mr. Satyabrata Mohanty, learned Additional Government Advocate for the State.

7. Mr. Moharaj assails the impugned judgment of conviction on the following grounds:

i) The conviction rests mainly on the evidence of P.Ws.1 and 2, which suffers from material omissions and contradictions and lacks independent corroboration.

ii) The prosecution failed to prove any specific act of cruelty or harassment for, or in connection with, dowry demand soon before the death of the deceased.

iii) The trial Court erred in invoking the presumption under Section 113-B of the Evidence Act without the prosecution first establishing the foundational facts necessary for its application.

iv) Prosecution failed to establish the manner or cause of death or that the appellants had caused the death, the evidence regarding killing being hearsay and uncorroborated.

v) Non-examination of the IO, who had died, caused prejudice to the defence in confronting the prosecution witnesses with the omissions and contradictions in their statements.

vi) Defence evidence regarding suicide on account of eczema was not properly appreciated by the trial Court.

vii) The circumstance that the dead body was cremated without informing the parental family, by itself, could not establish the ingredients of Sections 304-B or 498-A of the I.P.C.

viii) The evidence does not establish the ingredients of Sections 304-B and 498-A of the I.P.C. beyond reasonable doubt and, therefore, the appellants are entitled to the benefit of doubt

8. Per contra, Mr. Mohanty would argue that prosecution has established the marriage of the deceased with Prasant and the relationship of Lata as her mother-in-law and the evidence of P.Ws.1 and 2 establishes the demand for dowry and the cruelty meted out to the deceased on account of non-fulfilment of the further

demand of Rs.5,000/-. He submits that the deceased died an unnatural death within one and a half years of her marriage. P.W.2 stated that she had complained of dowry-related cruelty three to four months prior to her death thereby satisfying the requirement of 'soon before her death' and fulfilling the presumption under Section 113-B of the Evidence Act. He argues that the defence plea of suicide on account of eczema is unsupported by any medical or other reliable evidence and the cremation of the dead body without informing the family members is a relevant circumstance against the appellants, while the delay in lodging the F.I.R. has been satisfactorily explained by P.W.2. As regards the non-examination of the I.O., he submits that the I.O. had died and, therefore, his non-examination cannot be attributed to any lapse on the part of the prosecution and the evidence of P.Ws.1 and 2, being otherwise reliable, cannot be discarded merely because they are related to the deceased. He therefore, submits that the trial Court has rightly convicted the appellants and the impugned judgment warrants no interference.

9. We have heard learned counsel for the parties and have taken note of the rival contentions. We have also perused the case record and the impugned judgment.

10. It is relevant to note that, although the appellants were also charged, in the alternative, under Section 302 of the I.P.C., the trial Court did not record any finding on the said charge and convicted them only under Sections 304-B and 498-A of the I.P.C. read with Section 4 of the D.P. Act. Though the death occurred in the matrimonial home and the circumstances surrounding it including the cremation of the dead body without informing the parental family, require consideration, in the absence of any finding on the alternative charge under Section 302 of the I.P.C., the present appeal mainly concerns the conviction under Sections 304-B and 498-A of the I.P.C. read with Section 4 of the D.P. Act.

11. At the outset, there is no dispute that the deceased died an unnatural death within seven years of her marriage. The marriage between the deceased and Prasant

was solemnized on 07.12.1996 and she died on 04.05.1998, i.e., within about one year and five months of the marriage. According to D.Ws.1 and 2, the deceased committed suicide by hanging. Though the prosecution has not been able to establish the precise cause or manner of her death, the defence itself has taken the specific stand that she died by suicide, which obviously is not a natural death. Thus, the requirement under Section 304-B of the I.P.C. that the death should have occurred otherwise than under normal circumstances, as well as within seven years of marriage, stands satisfied. However, these circumstances, by themselves, do not establish the offence of dowry death. The prosecution must further establish that soon before her death, the deceased was subjected to cruelty or harassment by the appellants for, or in connection with, any demand for dowry. It is only upon these facts being established that the presumption under Section 113-B of the Indian Evidence Act can be invoked. The expression, 'soon before' is a relative one admitting no fixed time-limit; there must be a proximate and live link between the dowry-related cruelty or

harassment and the death. As held by the Supreme Court in cases of ***Mustafa Shahadal Shaikh V. State of Maharashtra[1], Kaliyaperumal V. State of Tamil Nadu[2], and Yashoda V. State of Madhya Pradesh[3]***, a remote or stale incident, without evidence of its continuance or recurrence proximate to the death, would not satisfy the requirement of 'soon before'.

12. In the present case, P.W.1, the wife of the deceased's brother, stated in her examination-in-chief that about one year and three to four months after the marriage of the deceased, her father died and when the deceased attended the Sudhi ceremony, she asked P.W.1 to give Rs.5,000/- as demanded by her husband. However, in cross-examination, she stated that about 15 days prior to the death of the deceased, when she visited their house for the last time, her father-in-law was alive when the deceased had asked her to give Rs.5,000/- as demanded by her husband. These two versions are difficult to reconcile. The

[1] (2012) 11 SCC 397
[2] (2004) 9 SCC 157
[3] (2004) 3 SCC 98

inconsistency assumes significance in view of the short period between the marriage and the death of the deceased and the witness's further statement regarding the annual death anniversary of her father. Such chronology creates considerable uncertainty regarding the time when the demand of Rs.5,000/- was made. P.W.1 has also stated that the deceased was not pulling on well with her husband while residing at Puri, which is not consistent with the evidence of P.W.2, who stated that he had seen the deceased and Prasant living happily at Puri for about three to four months after their marriage. Even if the allegation regarding the demand of Rs.5,000/- is accepted, P.W.1 attributes the demand only to the husband and does not state that Lata made any demand for dowry or subjected the deceased to physical or mental cruelty. Her statement that Lata did not like the deceased, by itself, does not establish cruelty or harassment. Further, although P.W.1 stated that the deceased had visited their house for the last time about 15 days prior to her death, she did not state that on that occasion the deceased complained of any dowry demand or

physical or mental harassment. Thus, the evidence of P.W.1 does not satisfactorily establish any specific or proximate act of dowry-related cruelty or harassment.

13. P.W.2, the brother of the deceased and the informant, stated that, prior to the marriage, Prasant had demanded Rs.10,000/-, which was paid along with gold ornaments and household articles. He further stated that, after the deceased returned to Ranpur, Prasant, Dayanidhi and Lata demanded a further sum of Rs.5,000/- and subjected her to assault and harassment on account of non-fulfilment of the said demand. According to him, the deceased disclosed such demand and the harassment meted out to her when she visited him about three to four months prior to her death. Thus, P.W.2 has given a specific account of the subsequent demand and referred to the disclosure made by the deceased within three to four months preceding her death. The mere interval of three to four months cannot, by itself, render the cruelty too remote to satisfy the requirement of 'soon before' under Section 304-B of the I.P.C. The question, however, is whether the evidence of

P.W.2, by itself, is sufficient to establish the requisite proximate and live link between the cruelty and the death. Though his testimony cannot be discarded merely because he is the brother of the deceased, it requires careful scrutiny as to its consistency and corroboration from the surrounding circumstances. It is, therefore, necessary to examine the evidence of the remaining prosecution witnesses.

14. P.Ws.3, 4 and 5 have also deposed regarding the demand of Rs.5,000/- and the harassment of the deceased. On careful scrutiny of their evidence, we find no reason to take a different view from that of the trial Court in declining to place reliance on their testimony. P.W.3 was unable to state when or where the deceased had made the disclosure, rendering his evidence vague on a material aspect. P.W.4 gave a more elaborate account of physical torture, refusal to allow the deceased to enter the matrimonial home and repeated complaints regarding the demand of Rs.5,000/-; however, the material particulars thereof were not found in his statement under Section 164 of the Cr.P.C. (Ext.3), and

the trial Court rightly treated the detailed version given during trial as an improvement. P.W.5 also stated that the deceased had informed him about the demand of Rs.5,000/- and the torture three to four months prior to her death, but his evidence suffers from uncertainty regarding the circumstances in which such disclosure was made.

15. Thus, from the overall appreciation of the evidence of the prosecution witnesses, we find that the prosecution has been able to establish the allegation of a further demand of Rs.5,000/- after the marriage and certain instances of harassment of the deceased in connection therewith. The evidence of P.W.2 on the aspect of such demand and the disclosure made by the deceased, is found to be consistent. However, apart from the evidence of P.W.2, there is no other reliable evidence establishing that the demand continued to be made or that the deceased was subjected to any further cruelty or harassment on account thereof proximate to her death. The mere fact that the demand remained unfulfilled cannot, by itself, justify an inference that the appellants necessarily continued to

subject the deceased to cruelty until her death. Such an inference must arise from the evidence on record and cannot be based only on the assumption that an unfulfilled demand must necessarily have continued to operate. There must be some evidence, direct or circumstantial from which such continuity can reasonably be inferred. In the present case, apart from the disclosure made by the deceased to P.W.2 about three to four months prior to her death, no specific circumstance has been brought showing that the demand was thereafter reiterated and the deceased was subjected to any further assault or harassment, or that the dowry-related dispute remained subsisting immediately preceding her death. It is also significant that P.W.1, who stated that the deceased had visited her parental house for the last time about 15 days prior to her death, did not state that on that occasion the deceased complained of any demand for dowry or any physical or mental cruelty. Though the absence of such a complaint on the last visit cannot, by itself, be treated as conclusive, it is a relevant

circumstance while considering whether the harassment continued up to the time of death.

16. In our considered view, even if the evidence of P.W.2 regarding the demand of Rs.5,000/- and the disclosure made by the deceased about three to four months prior to her death is accepted in its entirety, it would not be permissible to draw a inference that because the demand remained unfulfilled, the deceased must necessarily have continued to be subjected to cruelty and such cruelty ultimately resulted in her death. Such an inference would be based on assumption rather than on evidence. The prosecution was required to establish the foundational fact that the deceased was subjected to dowry-related cruelty or harassment soon before her death, and the existence of an earlier unfulfilled demand cannot, without supporting evidence regarding its continuance or recurrence, be treated as sufficient proof of that foundational fact. To hold otherwise would, in effect, amount to assisting the prosecution in discharging its initial burden for invoking the presumption under Section 113-B of the Indian Evidence

Act by placing on the defence the burden of explaining the death merely because the deceased died otherwise than under normal circumstances. The fact that the deceased died an unnatural death and that her dead body was cremated without informing her parents or brother may undoubtedly be relevant circumstances and may give rise to suspicion against the appellants, however, such circumstances cannot substitute the proof of the foundational facts required under Section 304-B of the I.P.C. The statutory presumption under Section 113-B can arise only after the prosecution first establishes, beyond reasonable doubt, that soon before her death the deceased was subjected to cruelty or harassment for, or in connection with, a demand for dowry. The inability of the defence to satisfactorily explain the circumstances of the death, or the suspicious manner in which the body was cremated, cannot relieve the prosecution of this initial burden. In the absence of satisfactory evidence establishing the proximate and live link between the dowry-related cruelty and the death, the

presumption under Section 113-B could not have been invoked against the appellants.

17. Even otherwise, considering the argument made by Mr. Moharaj in regards to delay in F.I.R., we find that P.W.2 in his admission has stated that he waited for two days after coming to know of the death of the deceased to 'settle the matter out of the Court' but no decision could be reached, so he lodged the F.I.R. in delay is highly significant and tells its own story. If P.W.2 being the brother of the deceased suspected his sister of being killed by her husband and in-laws due to dowry, why should he wait for two days instead of reporting the matter to police. Secondly, what was there to 'settle out of Court'? This conduct of P.W.2 appears highly suspicious and consequently, raises a doubt as regards the veracity of the testimony.

18. We shall now consider the conviction of the appellants under Section 498-A of I.P.C. and Section 4 of D.P. Act. Though the two provisions operate in distinct fields, the prosecution was required to independently

establish cruelty or harassment under Section 498-A and a demand for dowry under Section 4 of the D.P. Act. Even if the evidence of P.W.2 regarding the demand of Rs.5,000/- and the deceased's disclosure of harassment three to four months prior to her death is accepted, it does not establish any specific act of cruelty or harassment or the individual participation of either appellant in the demand. P.W.1 has not attributed any dowry demand to Lata and has merely stated that she did not like the deceased, while P.Ws.3, 4 and 5 suffer from the infirmities already noticed. Although the testimony of a related witness cannot be discarded only on that ground, the evidence must nevertheless be cogent and reliable to sustain a conviction. In the present case, the evidence on record, including that relating to the demand of Rs.10,000/- and other articles at the time of marriage, falls short of the required standard of proof.

19. Thus, upon an independent analysis of the evidence on record, we find that the prosecution has failed to establish that, soon before her death, the deceased was subjected to cruelty or harassment by the appellants for, or

in connection with, any demand for dowry. The evidence of P.W.2 may establish an earlier demand of Rs.5,000/- and the deceased's disclosure regarding such demand and harassment about three to four months prior to her death, however, there is no reliable evidence to establish its continuance or recurrence proximate to her death. The mere fact that the demand remained unfulfilled cannot, in the absence of supporting evidence, lead to an inference that the cruelty continued till her death. The unnatural death of the deceased in her matrimonial home and the subsequent cremation of her body without informing her parental family may give rise to suspicion and may be relevant in considering the circumstances of her death, but such circumstances cannot substitute the foundational facts required to attract Section 304-B of the I.P.C. Consequently, the presumption under Section 113-B of the Indian Evidence Act was not available to the prosecution, and the finding of the trial Court that the appellants had failed to rebut such presumption is unsustainable. The prosecution having failed to prove the essential ingredients of Section

304-B beyond reasonable doubt the appellants are entitled to the benefit of doubt, the conviction of the appellants thereunder cannot be sustained.

20. In the result, the appeal is allowed. The impugned judgment of conviction dated 23.09.2006 passed by the learned Additional District and Sessions Judge, F.T.C., Nayagrah in S.T. No. 8/90 of 2004-2000 is hereby set aside. The appellants being on bail be discharged from their bail bonds.

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(**Sashikanta Mishra, J)**

Manash Ranjan Pathak, J. I agree.

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(Manash Ranjan Pathak, J)

Signature Not Verified
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Signed by: PUSPANJALI GHADAI
Designation: Junior Stenographer
Reason: Authentication
Location: High Court of Orissa, Cuttack.
Date: 09-Sep-2026 16:23:18