
(2012) 02 AHC CK 0166
In the Allahabad High Court
Case No : Criminal Appeal No. 2360 of 2011

Dina Nath Lal Srivastava

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 09-02-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 372
Dowry Prohibition Act, 1961 — Section 3, 4
Penal Code, 1860 (IPC) — Section 304B, 498A

Citation : (2012) 02 AHC CK 0166

Hon'ble Judges : Ravindra Singh, J; Anil Kumar Agarwal, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. Heard learned counsel for the appellant, learned AGA appearing for the State of U.P. and perused the lower court record.
2. This appeal u/s 372 Cr.P.C. has been filed against the judgment and order dated 25.02.2011, passed by Additional Sessions Judge (Fast Track Court), Sonbhadra in S.T. No. 22 of 2008, whereby accused respondent nos. 2 & 3 have been acquitted for the offence punishable u/s 304-B IPC and 3 /4 D.P. Act.
3. It is contended by learned counsel for the appellant that the marriage of the deceased was solemnized on 02.03.2006 with accused respondent no. 2 Dhananjay Srivastava. Thereafter, demand of dowry was made, for which the deceased was subjected to cruelty. To settle the dispute, first informant came to the house of accused respondents on 04.10.2007 and made a request not to harass the deceased. The appellant left the house of the accused respondent after noon of 04.10.2007. When he was travelling in train on 05.10.2007, he received a telephonic message that the deceased had received burn injuries and she was taken to hospital in injured condition. The deceased has died due to burn injuries. The deceased had died within one year and seven months of her marriage. The death of the deceased was unnatural. The allegation of demand of

dowry, for which the deceased was subjected to cruelty, was made. The deceased was subjected to cruelty to fulfill the demand of dowry soon before her death also. The presumption is against the accused respondents. No evidence in its rebuttal has been adduced by the accused persons, but the trial court has convicted the accused respondents only for the offence punishable u/s 498-A IPC, but without any cogent reason the accused respondents have been acquitted for the main offence punishable u/s 304-B IPC and Section 3 /4 D.P. Act, whereas the prosecution has successfully proved its case against the accused respondents for the offence punishable u/s 304-B IPC and Section 3 /4 D.P. Act also. The acquittal of the accused respondents is simply based on conjectures and surmises and the same is not sustainable in the eyes of law. The trial court has ignored the evidence adduced by the prosecution and without any proper reason the accused respondents have been acquitted for the offence punishable u/s 304-B IPC and Section 3/4 D.P. Act. In such circumstances, the impugned judgment acquitting the accused respondents should be set aside by granting the leave to appeal.

4. From perusal of the record, it appears that in the present case the accused respondent nos. 2 & 3 have been convicted by the trial court for the offence punishable u/s 498-A IPC, but the accused respondents have been acquitted for the offence punishable u/s 304-B IPC and Section 3/4 D.P. Act. The deceased had died due to burn injuries. The death of the deceased occurred within one year and seven months of her marriage. The allegation of demand of dowry and subjecting the deceased to cruelty has been made. The death of the deceased is unnatural. The presumption is against the accused respondent nos. 2 & 3. In its rebuttal no evidence has been adduced by the accused respondents. In such circumstances, the impugned judgment of acquittal requires consideration, therefore, we grant the leave to appeal.

5. Admit.

6. Issue bailable warrant to accused respondent nos. 2 & 3 through CJM, Sonbhadra, returnable within a period of six weeks from today.

7. In case, accused respondents appear before the CJM, Sonbhadra, and furnish their bail bonds, the same may be accepted on taking an undertaking that after furnishing the bail bonds the accused respondents shall appear before this Court either in person or through their counsel within 15 days thereafter.

8. The lower court record has been received.

9. List for orders on 09.04.2012.