
(2007) 03 AHC CK 0115
In the Allahabad High Court

Satendra Kumar, Beg Raj Singh and Smt. Mansa Devi	APPELLANT
Vs	
State of U.P. and Bheem Singh	RESPONDENT

Date of Decision : 16-03-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Dowry Prohibition Act, 1961 — Section 3, 4
Evidence Act, 1872 — Section 113B
Penal Code, 1860 (IPC) — Section 120B, 201, 302, 304B, 328

Citation : (2007) 4 ADJ 491 : (2007) CriLJ 2537 : (2007) 2 DMC 452

Hon'ble Judges : K.N. Sinha, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

K.N. Sinha, J.—Heard Sri Amit Daga learned Counsel for the applicants and the learned A.G.A. appearing for the State.

2. The present petition has been filed for quashing of the charge sheet filed against applicants under Sections 498A and 304B IPC and Section 3/4 Dowry prohibition Act.

3. Learned Counsel for the applicants has submitted that according to the post mortem report no injury was found on the body of the deceased. The visra was preserved which was sent for chemical examination but no poison was found therein.

4. Learned Counsel for the applicants has submitted that in view of the post mortem report and chemical examination report of visra, the offence u/s 304B IPC is not made out. He has relied upon a judgment of this Court reported in 2006 (10) Allahabad Daily Judgment pane 262 and submitted that in such case Charge sheet can not be find

5. I have gone through the said judgment and find that this Court has directed the deletion of charge u/s 304B IPC. However, it permitted to continue the trial u/

s 498A IPC and u/s 3/4 Dowry Prohibition Act. Section 304B IPC lays down that "where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called "dowry death", and such husband or relative shall be deemed to have caused her death.

6. The Evidence Act has made a special provision by introducing Section 113B wherein it has been laid down as follows:

113-B. Presumption as to dowry death. - When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman had been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the Court shall presume that such person had caused the dowry death.

7. In such cases the court shall presume that such person has caused the dowry death. Deceased Smt. Pinki was married with applicant No. 1 Satendra Kumar in April 2004 and died on 5.12.2004 i.e. within eight months of her marriage. Though there is no burn injury or any bodily injury but in view of Section 304B IPC the cases in which death occurs otherwise than under normal circumstances presumption would be there. In the F.I.R. there is allegation regarding demand of dowry. It is for the applicants to prove that the death was under normal circumstances. There is no suggestion or evidence even worth the name that the death was caused under normal circumstances.

8. Thus, the argument does not hold good and the judgment referred to above does not apply at all.

9. Learned Counsel for the applicant has also relied upon Judgment Today 2007 (3) SC 229 Harishchandra Prasad Muni and Ors. v. State of Jharkhand and Anr. in which Hon"ble The Apex Court has held that "It is well settled by a series of decisions of this Court that cognizance cannot be taken unless there is at least some material indicating the guilt of the accused.

10. This preposition of law has been laid down in a case under Sections 302/201/328/120B IPC in which the burden of proving the guilt is on the prosecution. Thus, this law is also not applicable on the facts of the present case.

11. Therefore, the application u/s 482 Cr.P.C. is liable to be dismissed and it is hereby dismissed at the admission stage itself.