

(2012) 07 AHC CK 0043

In the Allahabad High Court

Case No : Government Appeal No. 6129 of 2011

State of U.P.

APPELLANT

Vs

Haribansh Pandey @ Sonu and Others

RESPONDENT

Date of Decision : 05-07-2012

Acts Referred:

Dowry Prohibition Act, 1961 — Section 3, 4
Penal Code, 1860 (IPC) — Section 120B, 304B, 498A

Citation : (2012) 3 ACR 2871

Hon'ble Judges : Ramesh Sinha, J; Dharnidhar Jha, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Dharnidhar Jha and Ramesh Sinha, JJ.—We have heard Sri D.I. Fareedi, learned A.G.A. on admission of the present Government appeal which has been directed against judgment of acquittal dated 17.5.2010 passed by learned Additional Session Judge/Special Judge (E.C. Act), Ghazipur in Session Trial No. 17 of 2008. The charges were under Sections 498A, 304B, 120B, I.P.C. and 3/4, Dowry Prohibition Act. The allegation was that Madhu was married to accused respondent, Haribansh Pandey, just after 1-1/2 years of her death, she was complaining of torture and ill-treatment, if she did not bring Rs. 2 lakhs in cash, a Hero Honda motorcycle, a golden chain, a golden ring alongwith golden bangles for her. It is undisputed that Madhu was burnt and she died in hospital at Ghazipur, where she had been shifted and hospitalised by her husband, Haribansh Pandey.

2. The learned trial Judge had scanned the evidence of the witnesses, like, P.Ws. 1, 2 and 7 who were parents and brother of the deceased and has inferred that the claim of prosecution that the deceased was being ill-treated or tortured in connection with demand of dowry, just prior to her death, was not acceptable. The learned trial Judge has admitted that there was no demand or agreement between the parties for giving of money or taking of dowry and further that the

statement which was given by P.W. 1, Awadh Kishore Tiwari, in court in respect of demand or persistence with demand for payment of any dowry was a serious improvement in the prosecution case because there was no such statement made by P.W. 1 at any stage of the investigation which we find from para 30 of the impugned judgment.

3. Likewise, the evidence of P.W. 2, Nand Kishore Tiwari of demand of dowry was also rejected by the learned trial Judge on the same and similar grounds. Besides, on probability also of such a demand being placed by accused persons before any family member of the deceased. So far as evidence of P.W. 7, Smt. Bindu Tiwari, mother of the deceased was concerned, the learned trial Judge appears justifiably holding that she was going a step ahead of the other witnesses in improving the case by highlighting the allegation, P.W. 7 was pointing out that her daughter was carrying two months pregnancy and further that the accused persons got aborted the deceased so that second marriage of Haribansh Pandey could be performed.

4. The most important circumstance which was arrived at by the learned trial Judge was that the lady was burnt for any particular reason and thereafter her family members, especially, her husband was anxious to save her life and he immediately shifted her to a hospital and sent information to different persons. The pharmacist of the hospital came with relevant records as exhibits 1 and 2 as treatment chart and bed head ticket to indicate that it was respondent Hari Bansh Pandey who brought the deceased to the hospital and got her admitted. The same discussion in paragraph 40 onwards indicates that P.W. 2 Nand Kishore Tiwari was also informed and, as such, he arrived at the hospital who was also signing the inquest report but was not lodging any report as was subsequently lodged. These are the circumstances which we find justifying the judgment of acquittal passed by the learned Sessions Judge, Ghazipur and we find no perversity in the judgment of acquittal. The Government appeal is dismissed.