

(2012) 07 UK CK 0049

In the Uttarakhand High Court

Case No : Application for Special Leave to Appeal No. 76 of 2012 with
Government Appeal No. 29 of 2012

State of Uttarakhand

APPELLANT

Vs

Smt. Kaushalya Devi

RESPONDENT

Date of Decision : 19-07-2012

Acts Referred:

Penal Code, 1860 (IPC) — Section 201, 302, 304B

Citation : (2012) 2 NCC 574

Hon'ble Judges : Umesh Chandra Dhyani, J; Barin Ghosh, J

Bench : Division Bench

Advocate : Hari Om Bhakuni, A.G.A. with Mr. V.P. Bahuguna, Brief Holder, for the Appellant;

Final Decision : Dismissed

Judgement

Barin Ghosh, C.J.—Smt. Kaushalya Devi was charged of having committed an offence punishable u/s 304B of the Indian Penal Code in the charge-sheet, as was filed. When the charge was framed, the court below also framed a charge against Smt. Kaushalya Devi of an offence punishable u/s 304B of IPC. At that stage, prosecution, being alive of the case of the prosecution, did not ask the court below to frame a charge against Smt. Kaushalya Devi, which is punishable u/s 302 of the Indian Penal Code. Since the charge was denied, a trial was called for. At the trial, prosecution established that the death of the victim took place within seven years from the date of her marriage. The prosecution also tried to establish that the death was an unnatural death, inasmuch as, dead body was recovered from a river. The post-mortem report, however, did not disclose that the death was by drowning. The postmortem report also did not indicate the possible reason for the death. In order to ascertain the reason for the death, viscera of the victim was preserved. At the trial, it did not come into evidence, what happened to the viscera. In course of evidence, one witness held out that the accused persons were trying to push the dead body into the river with the

help of poles. The father of the victim alleged that he was made to pay dowry twice, but still then the victim was being tortured, by her in-laws and, in particular, by Smt. Kaushalya Devi. There was no corroboration to the allegation of payment of dowry twice and also that despite payment of dowry twice, Smt. Kaushalya Devi was harassing or torturing the victim. In the circumstances, evidence to the effect that Kaushalya Devi was harassing or torturing the victim immediately before her death, as was propounded by the prosecution, has not been accepted by the court below. Though no charge punishable u/s 302 of I.P.C. was framed, a charge punishable u/s 201 of I.P.C. was framed on the ground that an attempt was made to conceal the evidence of the crime, namely, the dead body. This charge was sought to be proved on the basis of the evidence tendered by that person, who allegedly saw that an attempt was being made to push the dead body in the river by using poles. The court below has not accepted that piece of evidence. The reason, therefore, appears to be that the said witness sprung up suddenly and did not report the incident contemporaneously to the authorities, who were to be reported in regard to that incident.

2. Having regard to the nature of evidence, no purpose will be served in granting special leave to prefer appeal to the appellant. We, accordingly, refuse to grant such leave. The application made therefor, is dismissed. Consequentially, the Government Appeal fails and the same is also dismissed.