(2012) 02 AHC CK 0382

Allahabad High Court

Case No: Govt. Appeal No. 7315 of 2011

State of U. P.		APPELLANT
	Vs	
Jitendra Dubey and Others		RESPONDENT

Date of Decision: Feb. 21, 2012

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 161
- Dowry Prohibition Act, 1961 - Section 3, 4
- Penal Code, 1860 (IPC) - Section 147, 302, 304B, 307, 498A

Citation: (2012) 2 ACR 1991

Hon'ble Judges: Ramesh Sinha, J; Amar Saran, J

Bench: Division Bench

Advocate: D.R. Chaudhary, A.G.A, for the Appellant;

Final Decision: Dismissed

Judgement

Ramesh Sinha, J.
Heard learned A.G.A. for the State and perused the trial court judgment and record. This application for leave to appeal has been preferred against the judgment and order dated 22.9.2011 passed by the Additional Sessions Judge, Court No. 7, Azamgarh in S.T. No. 444 of 2001, State of U.P. v. Jitendra Dubey and others, by which the trial court has acquitted the accused respondents for the offence under Sections 147, 498A, 304B, I.P.C. and 3/4 of Dowry Prohibition Act, Police Station-Tarwan, district Azamgarh.

2. The prosecution case in brief is that an F.I.R. was lodged on 8.9.1995 by Hari Shanker Mishra stating that the marriage of his niece Bindu, daughter of Ramugrah Mishra, resident of Parupur. Police Station-Jahanaganj, district-Azamgarh was solemnized prior to three years with one Jitendra Dubey, son of Ramagya Dubey, resident of Village Gatwa, Police Station-Tarwa, district-Azamgarh. After the marriage, in-laws of Smt. Bindu used to demand T.V., Motorcycle, etc. as dowry and started torturing and harassing her

for bringing the same. The informant and other members of the family politely told the father-in-law, mother-in-law and husband of Smt. Bindu that they are poor persons and cannot give dowry, due to which, the in-laws of Smt. Bindu became annoyed and on 26.8.1995 at about 12 noon, her husband-Jitendra Dubey, jeth-Ram Janam Dubey, mother-in-law Smt. Lilawati wife of Ramagya Dubey, father-in-law Ramagya Dubey, resident of village Gatwa, Police Station-Tarwa, district-Azamgarh for want of dowry items such as T.V., Motorcycle etc., with a common object to kill Smt. Bindu, poured kerosene oil and set her ablaze. On the shrieks of his niece, neighbours of the village reached at the spot and saved the life of his niece. Thereafter, Smt. Bindu was taken in an injured condition to the District Hospital by her jeth-Ram Janam Dubey and mother-in-law Smt. Lilawati, where she was admitted by them. On receiving the information, the informant and other members of the family reached to the District Hospital where they talked to Smt. Bindu and then she told them about the incident that due to burn injuries her condition became serious. Thereafter, the informant left Ramugrah Mishra, father of Smt. Bindu, and other persons with Smt. Bindu in the District Hospital and had gone to lodge the F.I.R. of the incident.

3. The trial court has acquitted the accused respondents on the ground that three dying declarations of deceased Smt. Bindu were recorded and there was no consistency in the said three dying declarations. The first dying declaration which was recorded on 27.8.1995, has been marked as Exhibit Kha-1 and produced by the defence before the trial court. The said dying declaration was recorded by D.W. 1-Amar Nath Rai, who was posted as Naib Tehsildar, Sadar, district Azamgarh, and the said dying declaration was certified by D.W. 2-Dr. Jai Prakash Singh, who was posted as Emergency Medical In-charge in District Hospital, Azamgarh, who certified that the deceased Smt, Bindu was medically fit to give the statement. In the said dying declaration, the deceased Smt. Bindu has stated that on 26.8.1995 at 12 noon, her clothes had become dirty and she thought to wear other clothes. There was darkness in the house. Her clothes were of Georgette, caught fire by dibhri as due to the darkness the dibri was burning. She ran in the Aangan and fainted. Her mother-in-law raised alarm, then son of maternal uncle who was taking his food, came and he poured two buckets of water. She further stated that her husband used to sell vegetable in Azamgarh and father-in-law teaches in Azamgarh. There was no one in the house and she was all alone. She had no issue. After she was burnt, she was taken to the District Hospital Azamgarh for medical treatment and she does not want to say anything further.

4. The second dying declaration which is marked as Exhibit Ka-8 which was recorded on 7.9.1995 by P.W. 7-Vijay Bahadur Singh who was posted as Naib Tehsildar, At the time of recording of the said dying declaration no doctor has certified about the medical fitness of deceased Smt. Bindu. In the said dying declaration, it has been stated by the deceased that on 26.8.1995 at 12 noon she was at her husband''s house in village Gatwa and after doing the household works she had gone to take some rest and sleep. Thereafter, her jethani-Smt. Sushama had given her something to eat which she did not know. She was

conscious. Then her jethani Smt. Sushama and mother-in-law Smt. Kalawati (Lilawati) had tied her with rope. Thereafter, she started making noise and raised alarm, then her husband had come and shut her mouth by putting cloth in it and thereafter her jeth Ram Janam Dubey sprinkled kerosene oil on her and then her father-in-law Ramagya Dubey set her ablaze. Thereafter, she ran in the Aangan and then one boy by the name of Pappu, son of her husband''s maternal uncle, who had come at that point of time, poured two buckets of water, due to which the fire was put off. Thereafter, her mother-in-law and other in-laws took her to the hospital.

5. A statement u/s 161, Cr.P.C. was. also recorded on 9.9.1995 by the Investigating Officer which was also treated to be the dying declaration of the deceased Smt. Bindu, in which she has stated that on 26.8.1995 at about 12 noon she was in the kitchen near verandah and her mother-in-law Smt. Lilawati and Jethani Smt. Sushama had come there and sat and started talking with her. At that time, her Jeth Ram Janam and father-in-law Ramagya Dubey and her husband Jitendra Dubey had also come there. Her mother-in-law, Jethani and father-in-law had caught hold of her and tied her hands and legs with her dhoti. Her father-in-law had shut her mouth. Her Jeth Ram Janam poured kerosene oil on her and all of them told her husband that she had not brought anything in dowry and hence she must be killed by setting her ablaze. Her husband Jitendra set her ablaze by match box. When she started burning, all the persons (in-laws) came out of the house. While burning she raised alarm, on which persons of the village had come and thereafter she became unconscious and she became conscious in the hospital and she only came to know that Pappu who was the son of her husband''s maternal uncle had poured one bucket of water on her.

6. The trial court disbelieved the two dying declarations produced by the prosecution, i.e., Exhibit Ka-8 and the statement recorded u/s 161, Cr.P.C. of the deceased which was recorded by the Investigating Officer as the different versions have been given by the deceased and, moreover, in the dying declaration (Exhibit Ka-8) recorded on 7.9.1995, there was no certificate of the doctor that the deceased was in a medically fit condition to give the statement. The trial court believed the dying declaration (Exhibit Kha-1) recorded on 27.8.1995 which has been produced by the defence which was recorded by D.W. 1 Amar Nath Rai, Naib Tehsildar and also a medical certificate regarding the medical fitness was given by the Doctor D.W. 2 Jai Prakash Singh and in the said statement the deceased had not named any person for burning her.

7. It was found by the trial court that the F.I.R. of the incident was lodged by P.W. 1-Harishanker Mishra, uncle of the deceased, on 8.9.1995 after an inordinate delay, for which no satisfactory explanation has been given by the prosecution. It has come in the evidence of P.W. 2-Ramugrah Chaubey, father of the deceased, that he reached two days after the incident. i.e., 28.8.1995 to see her daughter In the hospital though he had received the information about the incident on 26.8.1995 and it did not occur to him that her daughter was burnt by these accused persons for want of dowry. The said conduct of the father of the deceased in view of the trial court also raised suspicion regarding the

demand of dowry by the accused respondents for which they would have killed the deceased.

8. The trial court from the evidence also found that P.W. 1 who was a man of criminal antecedents and was convicted u/s 302, I.P.C. by the Sessions Court and he was released on bail by the High Court and further he was also an accused in a case u/s 307, I.P.C. and also in Dacoity case with an ulterior motive for extracting money from the accused, has lodged the F.I.R. making allegations that the deceased was done to death by the accused respondent for want of dowry.

9. It is an admitted case of the prosecution that the deceased was admitted in the hospital after the incident in District Hospital by the mother-in-law for her medical treatment and after 18-20 days she died. No post-mortem of the deceased was conducted, hence in such a circumstance, it cannot be ascertained whether the deceased died due to the burn injuries. P.W. 4-Anand Dev Tiwari in his cross-examination has admitted that he did not make any enquiry about the dying declaration of the deceased as he did not think it proper to investigate about the same.

10. On the other hand, learned A.G.A. submitted that the death has taken place within three years of the marriage and the trial court has committed gross illegality in disbelieving the dying declaration dated 7.9.1995 (Exhibit Ka-8) which was recorded by the Naib Tehsildar and the statement u/s 161, Cr.P.C. recorded by the Investigating Officer on 9.9.1995 and believed the dying declaration dated 27.8.1995 (Exhibit Kha-1) which was recorded by D.W. 1-Naib Tehsildar, hence the order passed by the trial court suffers from perversity and is liable to be set aside. Having considered the totality of the circumstances of the present case, we are of the opinion that the view taken by the trial court in acquitting the accused respondents does not suffer from any illegality or perversity. It is well settled law that where two views are possible, the view taken by the trial court should not normally be interfered with if the other view taken by the trial court is not highly improbable or unreasonable. Hence no interference is called for in the judgment and order of the trial court.

Accordingly, the application for leave to appeal is rejected and the appeal is also dismissed.