

Court No. - 42

Case :- GOVERNMENT APPEAL DEFECTIVE No. - 394 of 2023

Appellant :- State of U.P.

Respondent :- Ram Prakash Tiwari And Others

Counsel for Appellant :- Ashutosh Kumar Sand

Counsel for Respondent :- Ruchi Mishra,Rajesh Yadav

Hon'ble Surya Prakash Kesarwani,J.

Hon'ble Ms. Nand Prabha Shukla,J.

1. Heard Sri K.P. Pathak, learned A.G.A. for the appellant in this Government Appeal.

2. This Government Appeal has been filed beyond limitation by 176 days along with delay condonation application and affidavit. As per affidavit accompanying the delay condonation application, the accused respondents have been acquitted from charges under Sections 498A, 304B I.P.C. and 3/4, Dowry Prohibition Act by impugned judgment and order dated 15.11.2022 passed by Additional District and Session Judge, Court No.9, Kanpur Nagar in Session Trial No.1167 of 2011 (State vs. Ram Prakash Tiwari and others) in Case Crime No.378/2010, P.S. Panaki, District Kanpur Nagar. In paragraphs- 3, 4, 5, 6, 7 and 8 of the affidavit, it has been stated that certified copy of the impugned judgment and order dated 15.11.2022 was belatedly applied on 31.03.2023, which was received on 07.04.2023/ 10.04.2023. The DGC (Criminal) submitted proposal before the District Magistrate, Kanpur Nagar on 20.04.2023, which was forwarded with recommendation by the District Magistrate to the State Government on 25.04.2023 and the approval was granted by the State Government by order dated 22.05.2023, which was received in the office of the Government Advocate on 27.06.2023. The affidavit accompanying the delay condonation application has been sworn on 02.08.2023 and it was filed on 07.08.2023. No explanation has been offered

for delay from 27.06.2023 to 02.08.2023. That apart the delay caused prior to 27.06.2023 has also not been explained properly. Thus, delay in filing the appeal has not been explained by the appellant. **Consequently, the delay condonation application deserves to be rejected.**

3. That apart, even on merit, the appellants have no case at all. The deceased Neelam, daughter of late Dinesh Kumar resident of village Gopalpur was married with the accused opposite party No.1 Ram Prakash Tiwari on 14.05.2009. On 06.09.2010, Ram Prakash Tiwari admitted the deceased in a private nursing home (Awasthi Nursing Home Lal Bungalow) for delivery of child. A baby-girl was born to the deceased on 07.09.2010 in the aforesaid private nursing home. The deceased and the newly born baby-girl were discharged from the nursing home on 11.09.2010. Mother of the deceased namely Sarja Devi (PW-2) accompanied the deceased throughout till discharge from the aforesaid nursing home. On discharge from the nursing home, the PW-2 proposed to bring the deceased to her paternal home for her proper post delivery care. The accused opposite party arranged a maruti vehicle driven by DW-4 to drop the deceased and her mother along with child at the paternal house of the deceased but on insistence of the PW-2 and despite resistance of the deceased, she was carried by PW-2 to village Gujaini Gopalpur instead of paternal house as Bhadarsa. On the next day, body of the deceased was found floating in a nearby pond. As per injury report, she suffered some ante mortem injury. The doctor opined the cause of her death to be asphyxia due to drowning. The PW-1 Kripa Shanker Tiwari lodged a first information report under Sections 498A, 304B I.P.C. and Section 3/4 Dowry Prohibition Act on 12.09.2010. Prosecution produced seven witnesses. The defence produced six witnesses. Neither any allegation has been made nor any evidence could be led by the prosecution that soon before her death, the deceased was committed to any cruelty by accused respondents. On the contrary, it is admitted fact that the deceased was living happily at her in-laws' house and her in-laws have admitted her in a private nursing home (Awasthi Nursing Home, Lal

Bungalow) for delivery of child where she gave birth to a girl-child on 07.09.2010. The informant PW-1 in his cross-examination has admitted that he has never gone to meet the deceased. Defence witnesses have proved that the deceased was living happily in her in-laws' house and neither her in-laws demanded any dowry nor committed any cruelty on her. The DW-4 specifically stated that he is engaged in business on transportation by his Maruti Van No. UP 78Y1002 and he carried the deceased and her mother PW-2 for dropping them in village Bhadarsha but when he reached at Rama Devi Crossing and the moment he turned towards village Bhadarsha, PW-2 the mother of the deceased instructed DW-4 to go to Gujaini Gopalpur which was opposed by the deceased stating that behaviour of *bhabhis* is not good and she will not go but the PW-2 stated that she has to go to Gujaini Gopalpur. He further stated that the father of the accused respondent Ram Prakash Tiwari tried to persuade the PW-2 but was unsuccessful. Thus, it could not be established by the prosecution that the accused respondents have committed any cruelty on the deceased before her death or that they used to commit cruelty for dowry or demanded dowry. The death of the deceased was caused at her parents' house and not at the house of her in-laws. Learned Trial Court has meticulously examined the evidences and recorded findings of fact in paragraphs 26 to 54 of the impugned judgment. Thus, even on merit, the impugned judgment does not suffer from any manifest error of law or fact. The ingredients of Sections 498A, 304B I.P.C. and Section 3/4 Dowry Prohibition Act, could not be established by the prosecution at all.

4. Under the circumstances, even on merit, the appeal hopelessly lacks merit.

5. For all the reasons aforestated, **the delay condonation application is rejected.** Consequently, **the application for leave to appeal and the government appeal** also stand **dismissed.**

Order Date :- 18.10.2023

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