

Non-Reportable

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.714 OF 2009

State of U.P.

.... Appellant

Versus

Damodar & Anr.

.... Respondents

ORDER

Uday Umesh Lalit, J.

1. This appeal by special leave challenges the order dated 07.09.2006 passed by the High Court of Judicature at Allahabad in Govt. Appeal No. 2923 of 2003 rejecting leave to appeal preferred by the appellant against the judgment and order of acquittal dated 24.03.2003 passed by the Additional Sessions Judge, Court No.8, Azamgarh in Sessions Trial No.484 of 1995.

2. According to the prosecution, marriage between the deceased Sunita and Respondent No.1 was solemnized in the year 1988 while her *gona* was performed in 1992 whereafter she started living in her matrimonial home. Her father Laldev had given dowry and gifts in the marriage according to his capacity but could not fulfil the demand for a gold chain and ring, because of which her husband i.e. Respondent No.1 and his family members were harassing Sunita.

3. On 01.09.1994 in the early hours a *dhebri* i.e. lamp is said to have fallen on the mattress on which Sunita was sleeping. She caught fire and was completely burnt. The fact that she was so burnt at 4.00 am was seen by neighbour PW4 Bachhi Devi. According to the witness Sunita's brother in law came to her place asking for a torch stating that Sunita had suffered burns. The witness went to the house of Respondent No.1 and found Sunita in burnt condition. Sunita then stated to the witness "*jo hona tha ho gaya*".

4. Sunita was taken to Primary Health Centre, Azamgarh where PW6 Dr. Om Prakash Shrivastava treated her at 7.00 AM and found that she had suffered 100 per cent burns. Since her condition was serious she was referred to Sadar Hospital but Sunita died while she was being taken to that Hospital.

5. Around 3.00 PM on that day her brother-in-law went to the parental house of Sunita in a jeep and told PW1 Tara Devi, her mother that the condition of Sunita was serious and insisted that she accompany them. PW1 Tara Devi along with her sister-in-law PW2 Reena Devi accompanied them. They found Sunita in completely burnt condition. It is the case of the prosecution that the in-laws of Sunita obtained thumb impression of PW1 Tara Devi forcibly on a piece of paper and thereafter cremated Sunita.

6. Laldev, father of Sunita at the relevant time was working in Mumbai. He received information through a telegram and came home. He approached the

police station but no action was taken. Subsequently Laldev sent an application on 09.09.1994 to the SSP, Azamgarh stating full details whereupon the case was registered on 20.10.1994 against the respondents. After conducting investigation the charge sheet was filed and charges were framed against the respondents under Sections 498A and 304B IPC.

7. The trial court after considering the material on record found that the prosecution had failed to establish that the death of Sunita had occurred in unnatural manner. It referred to the fact that PW4 Bachhi Devi had gone to the house of Respondent No.1 at 4.00 AM and had found that mattress was burning and Sunita was lying at some distance. She also found smell of kerosene oil emitting from the bed. It was held that the possibility could not be ruled out that the death of Sunita had occurred as a result of a lamp having fallen on the mattress. The trial court further relied upon the fact that the parents of deceased Sunita were informed and that the cremation had taken place after their consent. Though PW1 Tara Devi had stated that her signatures were obtained on a piece of paper forcibly, the trial court concluded that the death occurred as a result of falling of a lamp on the mattress and acquitted the respondents of the charges leveled against them.

8. The appellant- State sought leave to appeal against the aforesaid judgment and order of acquittal, by preferring Government Appeal No.2923 of 2003, which was rejected by the High Court vide its order dated 07.12.2006.

The order passed by the High Court is quoted below:

“We have heard learned A.G.A. for the State appellant and perused the impugned judgment. The deceased Sunita died of burn injuries. Her cremation was made in presence of her parents. A delayed F.I.R. was lodged with the allegation that there was demand of dowry and she was done to death. The trial court appears to have considered all the facts and circumstances of the case emerging from the record.

In above view of the matter, we do not find any force in the prayer to grant the leave to appeal.

The leave to appeal is rejected.”

9. The aforesaid order of the High Court is under challenge in the present appeal. Appearing for the State Mr. Pramod Swarup, learned senior Advocate invited our attention to the relevant material and evidence on record and submitted that the assessment made by the trial court was completely incorrect and that the High Court ought to have independently assessed the evidence. In his submission, the order of the High Court was very cryptic. Learned counsel appearing for the respondents supported the view taken by the High Court.

10. In our considered view the approach of the High Court in the instant case was completely incorrect. The order does not indicate that it considered the evidence led by the prosecution. To say the least, it appears improbable that a person as a result of falling of a lamp on the mattress could be reduced to the status of 100 per cent burns. Even if he was asleep, the normal reaction of

such person and the other inmates of the house would be to douse the fire. Therefore the matter had to be considered whether the death occurred in suspicious circumstances or not. The statement “*jo hona tha ho gaya*” attributed to Sunita is not indicative that whatever happened was a pure accident. We are conscious that the appeal itself was of the year of 2003 and left to ourselves, we would have gone into the matter and considered the merits. However, leave to appeal having been dismissed without even issuing notice to the other side, screening of the material and consideration of rival submissions at the appellate stage stood completely denied.

11. In the circumstances we set aside the order passed by the High Court and remit the matter to the High Court, which may be considered afresh. We request the High Court to dispose of the same as expeditiously as possible. We may not be taken to have expressed any opinion on merits of the matter.

12. The appeal stands allowed in these terms.

.....J.
(Pinaki Chandra Ghose)

.....J.
(Uday Umesh Lalit)

New Delhi,
May 06, 2015

ITEM NO.1D
(for Judgment)

COURT NO.11

SECTION II

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Criminal Appeal No(s). 714/2009

STATE OF U.P.

Appellant(s)

VERSUS

DAMODAR & ANR.

Respondent(s)

Date : 06/05/2015

This appeal was called on for pronouncement of judgment today.

For Appellant(s)

Mr. Pramod Swarup, Sr. Adv.
Mr. Sandeep Singh, Adv.
Mr. Anuvrat Sharma, Adv.
Ms. Alka Sinha, Adv.

For Respondent(s)

Mr. Mukesh Kr. Sharma, Adv.
Mr. Rameshwar Prasad Goyal, Adv.

Hon'ble Mr. Justice Uday Umesh Lalit pronounced the non-reportable judgment of the Bench comprising Hon'ble Mr. Justice Pinaki Chandra Ghose and His Lordship.

The appeal is allowed in terms of the signed non-reportable judgment.

(R.NATARAJAN)
Court Master

(SNEH LATA SHARMA)
Court Master