SUPREME COURT OF INDIA

Madan Lal

Vs.

State of U.P.

Crl.A.No.1701 of 2005

(Dr. Arijit Pasayat and Asok Kumar Ganguly JJ.)

05.03.2009

JUDGEMENT

Dr.Arijit Pasayat, J.

1. These two appeals are directed against the judgment of a Division Bench of the Allahabad High Court allowing the appeals filed by the State. The accused persons faced trial for alleged commission of offences punishable under Sections 304-B, 498-A of the *Indian Penal Code, 1860 (in short `IPC')* and Sections 3 and 4 of the *Dowry Prohibition Act, 1961 (in short `D.P.Act')*. Learned First Additional Sessions Judge, Moradabad (U.P.), directed acquittal of the present appellants holding that the prosecution version has not been established, and that there was no credible evidence of the deceased Asha having been caused death due to throttling. The trial Court held that the deceased was suffering from epilepsy and the possibility of her death on account of fit of epilepsy cannot be ruled out. State questioned the acquittal on several grounds. It was pointed out that there was direct evidence of demand of dowry and the Doctor's evidence clearly ruled out the possibility of the injuries sustained by the deceased having been caused due to epileptic fit. Accordingly, the judgment of the trial Court directing acquittal was set aside qua accused persons Madan Lal and Hoshiary (accused Nos. 2 and 3) appellants in Criminal Appeal No.1701 of 2005 and Ram Chander the appellant in Criminal Appeal No.1042/2006 who was accused No.1. However, the High Court did not interfere with that part of the judgment of the trial Court by which (accused No.4) Mithlesh was acquitted.

2. In support of the appeal, learned counsel for the appellants submitted that the view taken by the trial Court was a possible view and the trial Court had analyzed the evidence in great detail to held that the prosecution version was not established and on the contrary the defence version was probable. According to him, the view taken by the trial Court was a possible view and the High Court should not have interfered with the order of acquittal. Learned counsel for the respondent State submitted that the trial Court did not notice various relevant aspects. It was pointed out that the Doctors' evidence has been misread. There were two injuries on the neck of the deceased. The windpipe and the sound box of the deceased were fractured. It was submitted that such injuries cannot be caused by epileptic fits. In addition it

was submitted that the plea of the accused persons that the deceased was suffering from epilepsy was also not established by any cogent evidence. The version given by DW.1 and DW.2 was doubted and it was categorically observed by the High Court that their evidence was far from credible. It is also pointed out that there was clear evidence for demand of dowry.

3. Considering the rival submissions, we find that the trial Court's judgment was full of surmises and cojunctures. Reliance placed on Modi's Medical Jurisprudence to conclude that the injuries found on the neck of the deceased were possible due to epileptic fit is also not on a correct reading of the text. It is not stated any where that even a windpipe or sound box can be fractured as a result of epileptic fit. That being so, the trial Court's judgment was clearly vulnerable. The conviction as recorded by the High Court cannot be faulted. However, considering the background facts of the case, we reduce the sentence imposed in respect of Sec.304-B IPC to seven years which is the minimum. The appeals are allowed to the aforesaid extent.