

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

Petition(s) for Special Leave to Appeal (Crl) No(s).921/2006

(From the judgement and order dated 02/01/2006 in CRLMB No. 23499/2005 of the HIGH COURT OF JUDICATURE AT ALLAHABAD)

BHUDEV Petitioner(s)

VERSUS

RAKESH & ANR. Respondent(s)

(With office report)

Date: 12/02/2007 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE C.K. THAKKER
HON'BLE MR. JUSTICE LOKESHWAR SINGH PANTA

For Petitioner(s) Mr. R.D. Upadhyay, Adv.
Mr. Girdhar G. Upadhyay, Adv.
Ms. Vinita G. Upadhyay, Adv.
Mr. Syed Ali Ahmad, Adv.
Mr. Syed Tanweer Ahmad, Adv.
Mr. Awadhesh Kr. Singh, Adv.

For Respondent(s) Mr. Sidharth Dave, Adv.
R-2: Mr. Javed Mahmud Rao, Adv.
Mr. Shahid Ali Rao, Adv.

R-1: Mr. Aftab Rasheed, Adv.
Mr. Mukesh K. Giri, Adv.

UPON hearing counsel the Court made the following
O R D E R

Leave granted.

The appeal is allowed in terms of the signed order.

(N. Annapurna)
Court Master

(Vinod Kulvi)
Court Master

(Signed order is placed on the file).

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.190 OF 2007
(Arising out of S.L.P.(Crl.) No.921/2006)

Bhudev ...Appellant(s)

Versus

Rakesh & Anr. ...Respondent(s)

O R D E R

Leave granted.

This appeal is filed against the order passed by the High Court of Judicature at Allahabad on January 2, 2006 in Criminal Miscellaneous Bail Application No.23499 of 2005. By the said order, the High Court had released the husband, respondent No.1 herein, on bail. The case was registered against the first respondent along with other accused for offences punishable under Sections 304-B, 498-A, 120-B read with Section 34 of the Indian Penal Code as also under Sections 3 and 4 of the Dowry (Prohibition) Act vide Case Crime No.191/2005, P.S. Khurja Nagar, District Bulandshahar. The applications for release on bail were filed by the accused persons. Additional Sessions Judge, Bulandsahar, by order dated October 15, 2005, released certain persons on bail. Considering the fact, however, that the husband-respondent No.1 herein was the main culprit and the death of the deceased was due to strangulation alleged to have committed by the husband, he was not released on bail. The aggrieved husband approached the High Court and the High Court on January 02, 2006

released him on bail.

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Learned counsel for the appellant drew our attention to the fact that on December 23, 2005, time was granted to file an affidavit but there was Christmas vacation in the High Court and the High Court reopened on January 02, 2006 and, on that day, therefore, a prayer was made to grant some time but the High Court did not grant the time and passed the impugned order. The learned counsel for the appellant, in our opinion, is also right in relying upon the material with regard to injuries caused and the cause of death of wife. It was stated that the cause of death was strangulation and so far as burn injuries were concerned, they were post mortem injuries. The High Court has not considered the said aspect at all.

In view of the above facts, in our opinion, it would be appropriate if the order passed by the High Court is set aside and the matter remitted to the High Court to be decided in accordance with law. The appeal is, accordingly, allowed. We may, however, clarify that we are not expressing any opinion on merits and since we are of the view that the High Court ought to have considered everything, we have set aside the impugned order. Let the High Court consider the matter and decide strictly on merits.

.....J.
 (C.K. THAKKER)

.....J.
 (LOKESHWAR SINGH PANTA)

New Delhi,
FEBRUARY 12, 2007.