

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1623 OF 2008

RAJA MISHRA

..... APPELLANTS

VERSUS

STATE OF BIHAR TR. OFFICER IN CHARGE RESPONDENT

O R D E R

1. The appellant, and his son and co-accused, were sentenced to ten years rigorous imprisonment under Section 304B of the Indian Penal Code, three years rigorous imprisonment under Section 498A and 201 of the Indian Penal Code and two years rigorous imprisonment under Section 4 of the Dowry Prohibition Act; all the sentences to run concurrently.

2. The appellant is the father-in-law of the deceased. The trial court as well as the High Court have concurrently held on the basis of the evidence of P.W. 4 Ramadhar Tiwari, the father of the deceased, that a case under the aforesaid provisions was made out and that it was on account of the harassment meted out to the deceased in relation to dowry that she had met an

unnatural death. The evidence reveals that the appellant and his son i.e. the husband of the deceased had on several occasions demanded a motor cycle and in lieu thereof Rs. 17,000/- from the complainant and his family and that the last demand had been made twenty days prior to the incident which happened sometime on the 17th September, 1989. It appears that the police was not informed about the death and the body was cremated and the remains thrown into the river without informing the family of the deceased. As a result of the cumulative effect of the evidence, the aforesaid order was recorded.

3. Mr. Lakshmi Raman Singh, the learned counsel for the appellant has put forth various submissions and has pointed out that the prosecution case rested almost exclusively on the evidence of P.W. 4, R.D. Tiwari as the brothers of the deceased P.Ws' Sanjay Tiwari and Pramod Tiwari were virtually infants on the date when the incident had happened and were not aware as to the plight of their sister. He has further pleaded that P.W. 3 and P.W. 5, the two independent witnesses, had not supported the prosecution and the story, therefore, rested on the evidence of one interested witness.

4. The learned State Counsel has, however, supported the judgment of the courts below and has pointed out

that the special leave petition filed by the husband of the deceased, Prakash Mishra, had been dismissed while granting leave in the present matter and that the allegations against the appellant were similar to the one's against his son.

5. We have considered the arguments advanced by the learned counsel. It is true, as contended by the learned counsel, that the case rests on P.W.4 alone. However, in the light of the fact that the incident happened within seven years of the marriage and there had been demands for dowry soon before the death of the deceased, a presumption under Section 113B of the Evidence Act has also to be raised against the appellant. The evidence of P.W. 4 clearly reveals that demands were made from him and his family and he had repeatedly refused to satisfy the demands stating that he was a person with a limited income and a large family to support. Notwithstanding these pleadings, however, both the accused continued to harass the deceased which led to her death. Faced with this situation, the learned counsel has pointed out that the normal period of sentence in a case under Section 304B was seven years and only in extraordinary circumstances a higher sentence could be awarded. The learned counsel has also pointed out that the appellant was more than 80

years of age and completely immobilised as he was blind and could not discharge his daily chores without assistance and was, thus, a burden on the jail administration as well. He pleads on this ground that the sentence awarded to him under Section 304B of the IPC be reduced from ten to seven years. We accept this submission. We, accordingly, confirm the conviction of the appellant, but reduce the sentence from 10 years to seven years rigorous imprisonment for the offence under Section 304B of the IPC.

6. With the above modification in the sentence, the appeal is dismissed.

.....J
[HARJIT SINGH BEDI]

.....J
[CHANDRAMAULI KR. PRASAD]

NEW DELHI
NOVEMBER 18, 2010.