

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO. 583 OF 2004

AYODHYA PRASAD

.....

APPELLANT

VERSUS

STATE

.....

RESPONDENT

O R D E R

1. This appeal is by the father-in-law of the deceased who stands convicted for offences punishable under Section 304B and 498A of the Indian Penal Code and a sentence of ten years and one year rigorous imprisonment respectively, and under Section 4 of the Dowry Prohibition Act to a sentence of six months, all the sentences to run concurrently. The facts leading to the appeal are as under:

2. Kamlesh Kumari Prasad, the deceased daughter of Ayodhya Prasad P.W. 1 was married to Chandrika Prasad about two years prior to the incident in question. Kamlesh Kumari died due to 100 per cent burn injuries on the 4th September, 1989. A First Information Report was, accordingly, lodged by P.W. 1 in which he spelt out that his son-in-law i.e. Chandrika Prasad was posted in Kashmir

and the appellant-Ayodhya Prasad and his wife Sarju Devi, his parents were harassing her by demanding a Vicky Motor Cycle. This demand was repeated several times in the presence of P.W. 4 Babulal, the brother of P.W. 1 as well. It is further in evidence that on account of the non-satisfaction of the demand Kamlesh Kumari was subjected to cruelty and was also denied her food. It is the prosecution story that on account of this situation she committed suicide on the day in question. The trial court by its judgment dated 6th September, 1991, held that there was no categoric evidence against Sarju Devi, the mother-in-law as the primary evidence was against the appellant herein. The trial court, accordingly, acquitted Sarju Devi and convicted the appellant for the aforesaid offences. An appeal was thereafter taken by the appellant to the High Court which has confirmed the judgment of the trial court and dismissed this appeal. It is in this situation the matter is before us, after the grant of special leave.

3. The learned counsel for the appellant has pointed out that there was no categoric evidence against the appellant and the trial court having found that Sarju Devi was not involved, there was no circumstance in the present case which could inculcate the appellant. He has submitted that the defence evidence given by D.W. 1 and D.W. 2 had not been considered by the High Court and if this was taken

into account it was evident that no demand whatsoever had been made from the deceased or her parents and that the deceased had committed suicide on account of frustration as she wanted to join her husband in Kashmir which was not possible under the circumstances. It has further been pointed out that the husband had left for Kashmir only two days prior to the incident which fortified the submission about the mental state of the deceased. Mr. Pramod Swarup, the learned senior counsel for the State, has, however, supported the judgment of the trial court and the High Court.

4. We have heard the learned counsel for the parties and gone through the record.

5. We have absolutely no reason to doubt the statements of P.W. 1 and P.W. 4. It has been categorically, deposed that soon after the gona ceremony (which had been held a year before the incident) the accused had made a demand for a Vicky Motor Cycle from the parents of the deceased and on the failure of the complainant to provide the motor cycle, she had been grossly maltreated which had driven her to suicide. It is, therefore, apparent that the facts spell out the applicability of Section 304B IPC and the presumption under Section 113B of the Evidence Act has thus to be drawn against the appellant. The question is whether that presumption has been rebutted by the evidence of D.W.

1 and 2. The statement of D.W. 1 that he had made a statement to the Daroga at the time of the Panchnama about the frustration of the deceased is not borne out by the document. We are of the opinion that a cumulative reading of the defence evidence does not reveal any hint with regard to the frustration felt by the deceased on account of the absence of her husband.

6. It has been held by this Court repeatedly that the normal period of sentence for an offence under Section 304B is seven years. The award of a sentence of ten years in the present matter is to our mind not justified. We, accordingly, while dismissing the appeal, reduce the sentence imposed on the appellant from ten years to seven years. With this modification in the sentence the appeal is dismissed. The appellant to be taken into custody forthwith to complete the remaining part of the sentence.

7. Bail bonds stand cancelled.

J

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[HARJIT SINGH BEDI]

J

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[CHANDRAMAULI KR. PRASAD]

NEW DELHI

OCTOBER 26, 2010.

