

about a year on 31st July, 1992 her life spark got extinguished in an unnatural manner at the matrimonial home. The accused-appellants, as the prosecution story has unfolded, did not inform the brothers and parents of the deceased about the death. However, coming to know from others on 2.8.1992, they brought it to the notice of the concerned District Magistrate and, eventually, a First Information Report (FIR) was lodged on 3.8.1992. It was alleged in the FIR that whenever deceased Munni Devi visited the parental home, she used to complain about the

3

demand of dowry amounting to Rs.5,000/- (Rupees five thousand only) and the torture that was meted to her as the demand was not given.

After the criminal law was set in motion, the investigating agency recorded statements of number of witnesses and, eventually, laid the charge sheet before the competent court for the offences stated hereinbefore and the learned Magistrate committed the matter to the Court of Session.

The accused persons abjured their guilt and their plea before the learned trial Judge was that the deceased was keeping ill and she died a natural death and despite due information given to her family members, none came to participate in the cremation.

The prosecution to prove its case examined Dhanand, PW-1, Naresh Chander, PW-2, Harish Chander, PW-3, Chanuli -Devi, PW-4, and the Investigating Officer, PW-5. PW-4 turned hostile. The learned trial Judge, placing reliance on the testimony of the brothers, the conduct of the accused persons in not giving information to the family members of the deceased about her death, non-production of any document in support of suffering of the deceased and thereafter drawing presumption under Section 113-B of the Indian Evidence Act, convicted the accused persons of all scores and as far as Section 304-

4

B is concerned, sentenced the husband to suffer imprisonment for life. As far as the mother-in-law is concerned, the trial Judge sentenced her to undergo imprisonment for ten years. Be it noted, the sentences in

respect of other offences, namely, under Section 498A and Section 201 were for one year on each count with the stipulation that all the sentences would be concurrent.

Being dissatisfied with the aforesaid conviction and sentence, an appeal was carried and the High Court accepted the version of the prosecution that there was demand of dowry after marriage; that the deceased was tortured at the matrimonial home; that the death was unnatural and no information was given to the family members of the deceased; that on being asked about the cause of death, no satisfactory reply was given by the accused Madhavanand, the husband; that there was no reason to discard the testimony of the brothers who had categorically deposed that the deceased had revealed at the parental home that there was a demand of dowry and torture; and that the death having occurred in an unnatural manner within a span of seven years of marriage, there was no warrant to interfere with the judgment of conviction and order of sentence.

5

We have heard Mr. Ashok Kumar Sharma, learned counsel for the appellants and Mr. J.K. Bhatia, learned counsel for the State. Before we note the contentions raised by the learned counsel for the appellants, it is apt to note that when this Court issued notice, it was restricted to the appellant No. 1, Smt. Rewati Devi. Though such a restriction would not bind while hearing the appeal, yet regard being had to the facts and circumstances of the case, we think it appropriate to restrict our delineation to the limited notice.

Mr. Sharma, criticizing the judgment of the trial court which has been given the stamp of approval by the High Court, contended that all the brothers have spoken in a mechanical manner and it is also evident from their version that it was Bhuwan Chander, the other brother, who was managing the affairs of the house and was visiting the matrimonial house of the deceased but the prosecution, for reasons best known, has not examined him as a result an incurable dent in the story of the prosecution has been created. Learned counsel would submit that the

brother-in-law of the deceased (her sister's husband) attended the cremation ceremony which goes a long way to show that the members at the parental home were informed but they chose not to attend the ceremony and, in fact, later lodged the FIR by harbouring some grudge.

6

Learned counsel has also submitted that though the death has occurred on 31.7.1992, the complaint was filed before the District Magistrate on 2.8.1992 and the FIR was lodged on 3.8.1992 and the delay in such a circumstance is fatal to the prosecution case. Finally, it was put forth by Mr. Sharma that the appellant Rewati Devi is presently 83 years old as the records would show and, therefore, she may be leniently dealt with.

Mr. J.K. Bhatia, learned counsel for the State, supporting the judgment of conviction, contended that the appreciation of evidence by the learned trial Judge and further evaluation by the High Court is absolutely infallible and, therefore, this Court should not interfere with the same. Learned counsel for the State also would urge that the brothers of the deceased have not deposed on the basis of hearsay evidence but, on the contrary, they have asserted in an unequivocal manner that their sister whenever visited the parental house complained about the demand of dowry and the torture meted out to her by the husband and her mother-in-law and, therefore, learned trial Judge as well as the High Court has accepted the testimony to be credible and there is no justification to differ with the same.

To appreciate the rival submissions raised at the Bar, we have bestowed our anxious consideration and perused the judgment of the

7

trial court as well as that of the High Court. Learned counsel for the appellants has anxiously taken us through the evidence of the principal witnesses, namely, Dhanand, PW-1, Naresh Chander, PW-2, Harish Chander, PW-3, Chanuli Devi, PW-4, Leeladhar Paladia, CW-1, and Devki Devi, CW-2. On a careful scrutiny, we find that the brothers have deposed with certitude about the demand of dowry and torture. They have also stated that no information was given to them about the death of the deceased. The distance between the parental home and

matrimonial home of the deceased is seven to eight kilometers and, as it appears, the dead body was cremated without the knowledge of the family members. The feeble attempt to show that information was given because the brother-in-law (husband of the sister of the deceased) had attended the funeral ceremony cannot embellish the evidence of other witnesses. That apart, nothing has been brought on record to show that the deceased was suffering from any kind of illness. What has been suggested is that she was suffering from stomach ache and for which she died within a few hours. It has come in the evidence that a doctor is available seven to eight kilometers away, but no effort was made to call for the doctor. In any case, it sounds absolutely unnatural that in such a circumstance, the cremation would take place without informing the family members.

8

As far as the contention relating to delay in lodging the FIR, we find that the FIR was lodged on 3.8.1992, three days after the death of the deceased. Explanation that has been preferred is that the brothers were not aware of the death as they were not informed. Mr. Sharma would contend that there was consultation with others before lodging of complaint to the District Magistrate and, therefore, the facts were embellished before lodging of the FIR. The aforesaid submission leaves us unimpressed. It has been borne in evidence that both the sides belong to a village which is not literate and the brothers who were almost in a state of shock and hence they thought it prudent to inform to a responsible officer. It is noticeable that the said officer directed the police to investigate. In such a situation, we are not inclined to accept that there is any delay in lodging the FIR or there is any kind of improvisation or embellishment.

The last plank of submission of Mr. Sharma is that the appellant being a lady aged about more than four scores, should be leniently dealt with. The learned trial Judge has imposed a sentence of ten years. As we find that the conviction is well founded against her. However, we think the quantum of sentence deserves consideration. Keeping in view the age of the said appellant, we think it appropriate

that the minimum sentence provided under Section 304-B has to be imposed and, accordingly, we modify the sentence of ten years to that of seven years. We may hasten to add that we are obliged to restrict it to minimum because this Court in exercise of power under Article 142 of the Constitution cannot impose less than the minimum sentence as provided under the Indian Penal Code or under any statute providing minimum sentence for an offence.

In the result, the appeal is allowed in part as far as the quantum of sentence is concerned. As the appellant No. 1 is on bail, her bail bonds are cancelled and she be taken into custody forthwith.

.....J.
[Dipak Misra]

.....J.
[M.Y. Eqbal]

New Delhi;
April 16, 2014.