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Shalu Gupta Vs. State

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Court : Delhi

Decided On : Jan-30-2015

Judge : G. S. Sistani

Appellant : Shalu Gupta

Respondent : State

Advocate for Def. : Mr. Firoz Khan Ghazi

Advocate for Pet/Ap. : Mr. Ajay Burman

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI + CRIMINAL APPEAL No.1400/2012 % Date of decision :

30. h January, 2015 SHALU GUPTA . APPELLANT Mr. Ajay Burman, Advocate, Mr.Aditya Swarup Agarwal and Mr. Harsit Khurana, Advocate Through : versus .RESPONDENT STATE Through : Mr. Firoz Khan Ghazi, APP for the State with SI Roshan Lal, Police Station - Nangloi. CORAM : HONBLE MR. JUSTICE G. S. SISTANI HONBLE MS. JUSTICE SANGITA DHINGRA SEHGAL

JUDGMENT
(ORAL) 1. The present appeal arises out of the judgment dated 10.09.2012 and order on sentence dated 25.09.2012 by which the present appellant who is sister in law (husbands younger brothers wife) of the deceased, has been sentenced to

undergo rigorous imprisonment for three years and to pay fine of Rs.25,000/-, in default of payment of fine, the appellant had been directed to undergo simple imprisonment for two months for the offence punishable under Section 498-A Indian Penal Code.

2. Before the rival submissions of the parties can be considered, the case of the prosecution as set out by the trial court is as under:

(2) The case of the prosecution is that on 28.04.2007 DD No.65-B was received in the Police Station Nangloi regarding the fact that Anita W/o. Manoj Kumar was got admitted in RML Hospital. Pursuant to the said information S.I. Raghuvir Singh reached RML Hospital and collected the MLC of Anita who was declared brought dead by the doctors. One Kuldeep Singh Dalal the brother of the deceased met SI Raghuvir Singh who informed him that the marriage of his sister Anita was solemnized with Manoj Kumar in the year 2001. Since the death was causing within seven years of marriage, information was sent to SDM Punjabi Bagh and the dead body was got preserved at Mortuary. On 29.4.2007 the parents of the deceased i.e. Amir Singh (Father), Satwanti Devi (Mother) and Kuldeep Singh Dalal (Brother) were called by the SDM who recorded their statements. (3) The father of the deceased namely Amir Singh Dalal informed the SDM that the deceased Anita who was his youngest daughter, was married to Manoj Kumar on 2.4.2001 according to Hindu rites and customs and they had given dowry as per his capacity. According to Amir Singh Dalal, at that time accused Manoj was running a shop whereas his daughter Anita was working in RML Hospital as Staff Nurse and was earning Rs.15,000/- at that time and Rs.20,000/- at the time of her death. He further informed the SDM that after the marriage accused Manoj started consuming liquor and closed his shop on account of which the entire household affairs was running from the salary of her daughter Anita and Manoj started bearing Anita on account of dowry demands and used to torture Anita. Amit Singh Dalal alleged that the accused Manoj withdrew large amount from the GPF account of Anita and spent the same on his bad habits and all the family members of accused Manoj i.e. his mother Angoori Devi, his younger brother Vinod and the wife of his younger brother Shalu started beating to Anita on account of demand of dowry pursuant to which they (Amir Singh Dalal and his family members) visited

the house of Anita on many occasions and made efforts to make the accused understand but the beatings to his daughter did not stop. According to Amir Singh Dalal, at last on 28.4.2001 all the accused committed murder of Anita. (4) On the basis of the statement of Amir Singh Dalal, the present case was got registered. On 18.5.2007 the accused Manoj and Vinod were arrested on 19.5.2007 the accused Angoori Devi was arrested and on 29.8.2007 the accused Shalu surrendered in the Police Station after which she was arrested. Pursuant to the arrest of accused Shahu, she got recovered the weapon of offence i.e. Thapi with which all the accused inflicted injuries upon Anita. After completion of investigation charge sheet was filed against all the accused namely, Manoj, Vinod, Angoori Devi and Shalu.

3. In order to prove its case, the prosecution has examined as many as 32 witnesses. We may also notice that a separate appeal has already been filed by the husband of the deceased, who has been convicted under Section 302 of the Indian Penal Code. The State has placed reliance on the evidence of PW-2, brother of the deceased; PW-3, mother of the deceased; PW-5, PW-7 PW-8, who are the colleagues of the deceased; PW-9 the real sister of the deceased. MLC has been proved by Dr.Sunil Saxena, PW-10.

4. At the outset, Mr. Ajay Burman, learned counsel for the appellant submits that the appellant has already undergone major part of the sentence awarded to her i.e. about 2 years 4 months out of the three years and the unexpired portion of the sentence is approximately 8 months. Mr.Burman further submits that the appellant does not wish to contest the matter on merit but prays that the order of sentence be modified to the period already undergone.

5. It is also contended by Mr.Burman that in fact allegations made against the appellant are general in nature and no specific role has been assigned to her. He further submits that the appellant has been dragged into the matrimonial dispute between the deceased and her husband, who has been convicted under Section 302 Indian Penal Code and has been awarded life imprisonment. He further submits that upon reading of the evidence of the witnesses PW2 Kuldeep Singh Dalal, who is the father of the deceased, PW3 Satwanti Devi, mother of the

deceased and PW9 Vandana Rathi, younger sister of the deceased would show that there are material contradictions in their testimony. It s also contended that PW2 Kuldeep Singh Dalal in his complaint dated 28th/29th April, 2001, Ex.PW2/A has not leveled allegation regarding harassment and cruelty against above appellant and other family members. This witness also during his cross examination neither disclosed the dates and events of the harassment and cruelty nor such details were provided in the statement under Section 161 Code of Criminal Procedure, which would show that all the close family members being interested witnesses had made excoriated and material improvements in their testimony.

6. Another argument advanced by Mr. Burman is that PW2 Satwanti Devi has made material improvements in her testimony although in the statement dated 29.04.2012 Ex.PW3/A given before Sub-Divisional Magistrate wherein she had not levelled allegation regarding harassment and cruelty against the above appellant, Shalu Gupta. Mr. Burman also submits that the basic case of the prosecution is that after marriage, the husband of the deceased had left his job and was living on the salary of his wife, who was employed as Nurse in a government hospital. It is also a case of the prosecution that the husband of the deceased was involved in a criminal case and his family members had put immense pressure on the deceased to arrange money for the purpose of engaging a lawyer and to secure bail for her husband. It is also contended that the appellant had no role to play and has been falsely implicated. Mr. Burman further submits that the appellant had three minor children and has never been convicted for any offence in the past.

7. Mr. Firoz Khan Ghazi, learned APP for the State submits that the Learned Trial Court has awarded maximum punishment to the present appellant based on her role ascribed, which duly proved.

8. We have heard counsel for both the parties and carefully examined the evidence on record. The judgment of conviction has not been challenged. Mr. Burman has only prayed for modification in the order of sentence.

9. In a recent judgment Pashora Singh and Anr. Vs. State of Punjab reported at 1993 Supp (2) SCC33 while reducing the sentence awarded, the Supreme Court

took into consideration the mitigating factors like burden of maintaining widow and minor children.

10. Having regard to the submissions made and more particularly that the appellant is the first time offender, housewife with three minor children and has already undergone most of her period of sentence i.e. more than 2 years 7 months out of three years sentence awarded to her and fine also stands deposited, the present appeal is partly allowed. The order of sentence is modified to the period already undergone. Bail bond be cancelled and surety stands discharged.

11. Appeal stands disposed of, in above terms. G.S.SISTANI, J SANGITA DHINGRA SEHGAL, J JANUARY30 2015 gr /ssn

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