
(2011) 04 DEL CK 0185
In the Delhi High Court
Case No : Criminal Appeal No. 741 of 2010

Kumari Rinki

APPELLANT

Vs

Ladhu Ram and Another

RESPONDENT

Date of Decision : 19-04-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 354, 372, 374, 389
Penal Code, 1860 (IPC) — Section 354

Citation : (2013) 2 JCC 1095

Hon'ble Judges : V.K. Shali, J

Bench : Single Bench

Advocate : Asha Tiwari and Mr. M.N. Dudeja, APP, for the Respondent

Judgement

V.K. Shali, J.—There is no appearance on behalf of the appellant/complainant. I have heard the learned counsel for the respondent no. 1 as well as respondent no. 2.

2. It has been contended by the learned counsel for the respondent no. 1 that the present appeal as framed u/s 372 Cr.P.C. is not maintainable on the ground that the requirement of the proviso to the said Section 372 Cr.P.C. is not fulfilled.

3. I have considered the submissions of the learned counsel for the parties and have perused the record.

4. Briefly stated the facts of the case are that the respondent no. 1 was convicted for an offence u/s 354 IPC registered by P.S. Sarojini Nagar in FIR no. 191/2004.

5. The appellant herein is the complainant in respect of the said FIR and has alleged that the respondent no. 1 had outraged the modesty of the appellant. The respondent no.1 was convicted by the learned Metropolitan Magistrate and sentenced to imprisonment for six months apart from fine of Rs. 2,000/- vide judgment and order dated 26.2.2010. The respondent no. 1 aggrieved by the said order preferred an appeal u/s 374 Cr.P.C. before the Court of Sessions. The

learned Court of Sessions, Delhi vide its judgment dated 29.4.2010 upheld the conviction of the appellant for an offence u/s 354, but so far as the quantum of sentence is concerned, the same was converted from sentence of imprisonment for six months and fine of Rs. 2,000/- to imprisonment till the rising of the Court and a fine of Rs. 5,000/- and in default of payment of fine, the respondent no. I was directed to undergo simple imprisonment for six months.

6. The learned counsel for respondent no. 1 has stated that the fine of Rs. 3,000/- has already been deposited by her in the Court of learned MM and an amount of Rs. 2,000/- was deposited by the respondent at the time of suspension of sentence and enlargement of bail u/s 389 Cr.P.C.

7. The appellant/complainant aggrieved by the judgment of Sessions Judge chose to file the present appeal u/s 372. Section 372 reads as under:-

372. No appeal to lie unless otherwise provided--No appeal shall lie from any judgment or order of a criminal Court except as provided for by this Code or by any other law for the time being in force.

[Provided that the victim shall have a right to prefer an appeal against any order passed by the Court acquitting the accused or convicting for a lesser offence or imposing inadequate compensation, and such appeal " shall lie to the Court to which an appeal ordinarily lies against the order of conviction of such Court.]

8. A perusal of the proviso to Section 372 Cr.P.C. will clearly show that although the complainant has a right to prefer an appeal against an order passed by the Court acquitting the accused or "convicting the accused, of a lesser offence or imposing inadequate compensation but no appeal would lie where the conviction of the accused has been upheld by the Appellate Court for which he has been convicted by the Trial Court itself.

9. In the instant case also, the respondent no. 1 has been convicted by the Appellate Court for the same offence for which he was convicted by the Trial Court but only sentence has been reduced from one of imprisonment for six months to the one of imprisonment till the rising of the Court. In lieu thereof fine of Rs. 2,000/- has been enhanced to Rs. 5,000/- It cannot be said that the respondent no. I has been punished inadequately or for a lesser offence and therefore, the requirement of proviso to Section 372 Cr.P.C. are not satisfied and consequently the present appeal cannot be entertained u/s 372 Cr.P.C.

10. For the reasons mentioned above, feel that the present appeal is totally misconceived and accordingly the same is dismissed. Trial Court record be returned back.