
(2019) 11 DEL CK 0371

In the Delhi High Court

Case No : Criminal Appeal No. 1276 Of 2019

State (Nct Of Delhi)

APPELLANT

Vs

Sharmila @ Nanhi

RESPONDENT

Date of Decision : 28-11-2019

Acts Referred:

Indian Penal Code, 1860 — Section 307

Citation : (2019) 4 JCC 4164

Hon'ble Judges : Manmohan, J; Sangita Dhingra Sehgal, J

Bench : Division Bench

Advocate : Amit Gupta

Final Decision : Dismissed

Judgement

Manmohan, J

1. Present criminal appeal has been filed by the State challenging the order dated 31st July, 2019 sentencing the respondent-accused under Section 307 IPC to two years rigorous imprisonment and fine of Rs.10,000/-.
2. Mr. Amit Gupta, learned APP for the State states that the learned Additional Sessions Judge, after holding that a lethal weapon like surgical blade had been used to commit assault on a vital part of the body like neck of the Victim (PW-1), had not given any specific reason for not awarding the maximum sentence to the respondent-accused.
3. This Court in State (Govt. of NCT of Delhi) vs. Sonu, CrI.A. 1256/2019 decided on 21st November, 2019 has held that Section 307 IPC prescribes no minimum sentence and the Trial Court can award the maximum sentence provided therein i.e. life imprisonment or any sentence upto ten years after taking into account all the aggravating and mitigating circumstances of the case.
4. It was further held that enhancement of a sentence by an Appellate Court is justified in cases only where the sentence is manifestly inadequate. The relevant

portion of the judgment in State (Govt. of NCT of Delhi) vs. Sonu (supra) is reproduced hereinbelow:-

"12. In India, appeals against inadequate sentences are possible to the superior Courts i.e. High Courts and ultimately to the Supreme Court under the powers given to them in the Criminal Procedure Code and the Constitution. The scope of challenge to the sentence awarded by the Trial Court in appeals is, however, limited as is made clear in the various pronouncements of the Apex Court. The question of sentence is normally a matter of judicial discretion of the trial court and the superior Court does not as a rule interfere with the exercise of such discretion. In a matter of enhancement, there should not be interference when the sentence passed imposes substantial punishment. Enhancement of a sentence by an appellate Court is justified in cases only where there is a particular and cogent ground warranting interference.

13. Consequently, interference is only called for when it is manifestly inadequate. The Supreme Court in Ram Narain and Ors. Vs. State of U.P. 1970 (3) SCC 493 has held as under:-

"5.Merely because the appellate court feels that left to itself it would have preferred to impose the sentence of death is by itself and without more not a sufficient ground to justify enhancement. It is only when the sentence appears on the facts and circumstances of the case to be so manifestly inadequate as to have resulted in failure of justice that enhancement of the sentence may be justified by the appellate Court.

Xxx xxx xxx

7. It is true that this Court normally does not interfere with the discretion exercised by the High Court on the question of sentence even though the same has been enhanced but where the trial court has exercised its discretion on proper consideration of the material on record and its order cannot be described to be either contrary to recognised principle or otherwise having caused failure of justice and further when the State does not consider that the ends of justice require enhancement of the sentence but the High Court interferes at the instance of a private complainant this Court would be fully justified in considering for itself the propriety of the sentence as enhanced by the High Court."

(emphasis supplied)

14. In broad terms, the appellate Court will interfere when:-

- a) The sentence is not justified by law, in which case it will interfere not as a matter of discretion, but of law;
- b) Where sentence has been passed on a wrong factual basis;
- c) Where some matter has been improperly taken into account or there is some fresh matter to be taken into account; or

d) Where the sentence was wrong in principle or manifestly excessive/inadequate.

15. The above-mentioned categories are not exhaustive and they may overlap."

5. Though in the present matter it was not the admitted case that the respondent-accused had been in relationship with victim (PW-1) and the latter had forced the respondent-accused to leave her husband, yet the victim (PW-1) had admitted that as she was being blamed by the family of the respondent-accused for separation of the respondent-accused from her husband, the victim (PW-1) had stopped talking to the respondent-accused. It is also pertinent to mention that the respondent-accused was arrested from the hospital where the victim (PW-1) was being treated.

6. The Trial Court while imposing a lesser sentence has pointed out that the respondent-accused has no criminal background and she was seventh class pass, who had separated from her husband after a month of marriage and was earning a livelihood by ironing clothes whereas her mother was a washerwoman and her sister was unemployed and her father had previously expired.

7. In view of the aforesaid, this Court is of the opinion that the impugned sentencing order passed by the Trial Court, after consideration of all relevant factors, is not manifestly inadequate. Consequently, present appeal is dismissed.