

Parvinder Kansal vs The State Of Nct Of Delhi on 28 August, 2020

Equivalent citations: AIR 2020 SUPREME COURT 4044, AIR ONLINE 2020 SC 702

Author: Ashok Bhushan

Bench: Ashok Bhushan, R. Subhash Reddy, M.R. Shah

Crl.A.@S.L.P.(Crl.)No.3928 of 2020

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 555 OF 2020
[Arising out of S.L.P.(Crl.)No.3928 of 2020]

Parvinder Kansal

...App

Versus

The State of NCT of Delhi & Anr.

...Respond

ORDER

1. Leave granted.

2. This criminal appeal is filed by the appellant in Criminal Appeal No.1284 of 2019, aggrieved by the order dated 27 th November 2019 passed by the High Court of Delhi at New Delhi. By the aforesaid order, High Court has dismissed the appeal filed by the appellant herein under Section 372 of the Code of Criminal Procedure seeking enhancement of sentence imposed in Sessions Case No.742 of 2007 by the Special Judge (NDPS), North District, Rohini District Courts, Delhi vide order dated 17.08.2019.

3. The appellant herein was the complainant in FIR No.742 of 2007 registered on 15.10.2007 for the offence under Section 364A read with Section 34, IPC and the second respondent Crl.A.@S.L.P.(Crl.)No.3928 of 2020 herein was the accused. After investigation of the crime, chargesheet dated 11.01.2008 was filed against the second respondent accused under Sections 364A/302/201, IPC. On committal, case was referred to the court of Special Judge (NDPS), North District, Rohini Courts, Delhi and the second respondent was tried in Sessions Case No.58259 of

2016. By judgment dated 30th July 2019 in the above said Sessions Case No.742 of 2007 the second respondent was convicted for offence punishable under Sections 364A, 302 and 201, IPC. By subsequent order dated 17th August 2019 he was sentenced for offence under Sections 302, 364A and 201, IPC as under :

“14. In view of above observations this Court directs that :

A) The convict is sentenced with imprisonment for life u/s 302 IPC and is further directed to pay a fine of Rs.1 lakh. In default of payment of fine, he is directed to undergo SI for five years.

B) The convict is sentenced with imprisonment for life u/s 364A IPC and is further directed to pay a fine of Rs.1 lakh. In default of payment of fine, he is directed to undergo SI for five years.

C) The convict is sentenced with rigorous imprisonment for seven years for the offence punishable u/s 201 IPC and is further directed to pay a fine of Rs.50,000/□ In default of payment of fine, he is directed to undergo SI for one year.

All the sentences shall run concurrently. Benefit of Section 428 Cr.PC shall be given to the convict qua the offence u/s 201 IPC.” CrI.A.@S.L.P.(CrI.)No.3928 of 2020

4. The complainant, who is the father of the deceased boy, has filed appeal challenging the order of sentence dated 17 th August 2019 passed by ASJ/Special Judge (NDPS), North District, Rohini Courts, Delhi in Sessions Case No.58259 of 2016 seeking enhancement of sentence to death penalty. In the appeal filed before the High Court under Section 372, Code of Criminal Procedure, 1973 (for short, ‘Cr.PC’), it was his case that the sentence of life imprisonment imposed on the second respondent□convict is inadequate and needs to be enhanced to death penalty. Vide impugned judgment dated 27 th November 2019 the High Court of Delhi has dismissed the appeal as not maintainable.

5. We have heard Sri Ashwani Bhardwaj, learned advocate appearing for the appellant and Sri Chirag M. Shroff, learned counsel appearing for the State of NCT of Delhi.

6. It is contended by learned counsel for the appellant, though the respondent no.2 had committed murder of an innocent child, the Sessions Court, instead to award punishment of death penalty, has awarded only imprisonment for life. It is contended that in view of proviso to Section 372, Cr.PC which gives right to prefer appeal to the victim, when the accused is convicted for CrI.A.@S.L.P.(CrI.)No.3928 of 2020 lesser offence, there is no reason to restrict the scope of appeal only for a lesser offence but not for lesser sentence. It is submitted that on 15.10.2007 when the son of the appellant was kidnapped and demand of ransom was made which was also paid to the second respondent but after kidnap his son was brutally murdered. As such, it is submitted that it is a fit case for enhancement of sentence from life imprisonment to death penalty, for the second respondent. The learned counsel has submitted that the High Court has not considered the

provision under Section 372, Cr.PC properly vis-à-vis the judgments referred to and dismissed the appeal, contrary to plain meaning of Section 372, Cr.PC.

7. On the other hand it is submitted by learned counsel for the State of NCT of Delhi that a reading of provision under Section 372 and Section 377 of Cr.PC makes it clear that the appeal under Section 372 Cr.PC by the victim is a qualified one which is maintainable in the event of acquittal of the accused or convicting for lesser offence or for imposing inadequate compensation only, whereas under Section 377 Cr.PC State Government is empowered to prefer appeal to the High Court in the event of inadequate sentence by the Sessions Court. It is stated by learned counsel that for enhancement of sentence, victim cannot maintain appeal under Section 372 of Cr.PC. Crl.A.@S.L.P.(Crl.)No.3928 of 2020

8. Having heard learned counsel on both sides, we have perused the material on record and the relevant provisions of the Code of Criminal Procedure, 1973.

9. Chapter XXIX of the Code of Criminal Procedure, 1973 deals with 'Appeals' and Section 372 makes it clear that no appeal to lie unless otherwise provided by the Code or any other law for the time being in force. It is not in dispute that in the instant case appellant has preferred appeal only under Section 372, Cr.PC. The proviso is inserted to Section 372, Cr.PC by Act 5 of 2009. Section 372 and the proviso which is subsequently inserted read 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.” A reading of the proviso makes it clear that so far as victim's right of appeal is concerned, same is restricted to three eventualities, namely, acquittal of the accused; conviction of the accused for lesser offence; or for imposing inadequate compensation. While the victim is given opportunity to prefer appeal in the event of imposing inadequate compensation, but at the same time there is no provision for appeal by the victim for questioning the order of sentence as inadequate, whereas Section 377, Cr.PC gives the power to the State Government to prefer appeal for enhancement of sentence. While it is open for the State Government to prefer appeal for inadequate sentence under Section 377, Cr.PC but similarly no appeal can be maintained by victim under Section 372, Cr.PC on the ground of inadequate sentence. It is fairly well settled that the remedy of appeal is creature of the Statute. Unless same is provided either under Code of Criminal Procedure or by any other law for the time being in force no appeal, seeking enhancement of sentence at the instance of the victim, is maintainable. Further we are of the view that the High Court while referring to the judgment of this Court in the case of National

Commission for Women v. State of Delhi & Anr. (2010) 12 SCC 599 has rightly relied on the same and dismissed the appeal, as not maintainable. Crl.A.@S.L.P.(Crl.)No.3928 of 2020

10. For the aforesaid reasons, we do not find any merit in this appeal, so as to interfere with the impugned order passed by the High Court. The appeal is accordingly dismissed.

.....J. [ASHOK BHUSHAN]J. [R. SUBHASH REDDY] New Delhi.

August 28, 2020.