

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Criminal Appeal No. D-1867-DB of 2014
Date of Decision : July 14, 2015

Yash Kathuria and another

.....Appellants

VERSUS

State of Haryana and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE T.P.S.MANN
HON'BLE MR. JUSTICE MAHAVIR S. CHAUHAN

Present : Mr. Vivek Goel, Advocate.

T.P.S. MANN, J.

The appellants have filed the present appeal against the impugned judgment passed by the Additional Sessions Judge, Palwal whereby respondents No. 2 to 4 have been acquitted of the charges under Sections 304-B/34 IPC. Challenge is also to the inadequate sentence of imprisonment imposed upon respondent No.5-Rajesh Gulati.

The private respondents were tried for the offences punishable under Sections 304-B and 302 read with Section 34 IPC. The trial ended with the acquittal of respondents No.2 to 4 of the charges against them. Respondent No.5 was held guilty under Section 304-B IPC and sentenced to undergo imprisonment for ten years.

In brief, the prosecution case is that Shakshi, elder sister of appellant Yash Kathuria, was married to Rajesh Gulati two years prior to the alleged incidence. Sufficient dowry articles were

given as per the status of the family. However, after some time, Shakshi was harassed by her husband Rajesh Gulati, his elder brother Hemant Gulati and his wife Kanchan Gulati also known as Lakki for bringing i20 car. The deceased informed her parents about the said demand. After some time, Rajesh Gulati purchased the car and demanded its purchase money from the deceased. The deceased used to be continuously beaten by the accused persons. The deceased apprised her uncle Gian Chand Kathuria about her maltreatment. She even expressed apprehension of being killed by the accused persons if their demand was not met. Ashok Gulati, uncle of Rajesh Gulati, used to hurl filthy abuses on Shakshi and would taunt her for bringing less dowry. On 27.4.2013 at about 2.30 p.m., Rajesh Gulati informed complainant Yash Kathuria that Shakshi was not well and he should reach immediately. On reaching the matrimonial home of Shakshi, the complainant learnt that all the four accused had killed her by hanging her and the dead body was taken to General Hospital, Palwal. At General Hospital, Palwal, complainant Yash Kathuria got recorded his statement before the police and, accordingly, FIR was registered.

Having heard learned counsel for the appellants and on going through the impugned judgment, this Court finds that though Rajesh Gulati and his wife Shakshi on the one hand and Hemant Gulati and his wife Kanchan Gulati on the other used to reside in one house but from the ration card Ex.D4/A and gas connections Ex.D-10 and Ex.D11 it can safely be concluded that Hemant Gulati and Kanchan Gulati were living separately from

Rajesh Gulati and Shakshi. PW1 Yash Kathuria has admitted in his cross-examination that deceased Shakshi used to live on the first floor of the house whereas Hemant Gulati and his wife used to live on the ground floor. He also admitted that Hemant Gulati was a government servant while his wife was a teacher. Similarly, Ashok Gulati, uncle of Rajesh Gulati, was living separately from Rajesh Gulati and his wife Shakshi. Further, it was Rajesh Gulati who had demanded money from his wife Shakshi for buying the car. The said demand was conveyed by Shakshi to her parents. Subsequently, Rajesh Gulati purchased the car himself and then sought the money from the deceased which he had spent on buying the car. The said car as well as demand of certain household goods could have fulfilled the needs of only Rajesh Gulati and not his family members i.e. brother Hemant Gulati, brother's wife Kanchan Gulati and uncle Ashok Gulati. As regards maltreatment and harassment of deceased Shakshi, there are general and vague allegations levelled against Hemant Gulati, Kanchan Gualti and Ashok Gulati and, thus, respondents No.2 to 4 cannot be held liable for the offences for which they had been charged. Even if some other conclusion, other than the one drawn by the trial Court, is likely to be arrived at that by itself is not sufficient to upset the findings arrived at by the trial Court and to convict respondents No.2 to 4 of the charges against them. The conclusion arrived at by the trial Court cannot be said to be highly perverse.

As regards the plea of the appellants that sentence of

imprisonment of ten years imposed upon respondent Rajesh Gulati is inadequate, and, therefore, be enhanced, suffice it to say that proviso to Section 372 Cr.P.C. under which the appellants have filed the present appeal, do not permit the victims to plead that the sentence of imprisonment imposed upon Rajesh Gulati be enhanced. Only under Section 377 Cr.P.C. the appellate Court can enhance the sentence of imprisonment but to seek that, remedy is given to the State and not to the complainant or the victims.

Faced with the above, learned counsel representing the appellants has submitted that he may be allowed to withdraw the present appeal in so far seeking enhancement of sentence of imprisonment of respondent Rajesh Gulati with liberty to avail any other remedy.

The appeal is, hereby, dismissed qua respondents No.2 to 4. However, qua respondent No.5, the appeal is dismissed as withdrawn with liberty to the appellant to seek any other remedy available to him under the law.

(T.P.S. MANN)
JUDGE

(MAHAVIR S. CHAUHAN)
JUDGE

July 14, 2015
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