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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Judgment reserved on : 03.12.2015*
Judgment delivered on : 11.12.2015

+ CRL.A. 1487/2013 & CrI.M.B.No.842/2014

DALIP KUMAR YADAV Appellant

Through: K.Singhal, Advocate.

versus

STATE (GOVT. OF NCT) OF DELHI..... Respondent

Through Mr.Tarang Srivastava, APP

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J.

1 This appeal is directed against the impugned judgment and order on sentence dated 07.6.2013 and 09.7.2015 respectively wherein the appellant stands convicted under Section 307 of the IPC. He has been sentenced to undergo RI for a period of 7 years and to pay a fine of Rs.5,15,000/- in default of payment of fine to undergo RI for 6 months. Out of which Rs.5,00,000/- was to be released to the victim as compensation.

2 Nominal roll of the appellant reflects that as on date he has completed incarceration of almost 7 years.

3 The version of the prosecution was unfolded in the testimony of the victim who has been examined as PW-4 (SO). She was an adult aged about 18-19 years on the date of the offence. She was working as a CS trainee in the HBN Group of Companies. The appellant was living nearby. He was known to her since her third year of college. She was continuously harassed by him for many days by making calls at her mobile. He also used to come to her office stating that he was in love with her. She told him that she was not interested in him and requested him to stop harassing her but this was of no avail. On 04.9.2009 at about 6.00 p.m. she left the office for returning to home at RZ 230, Raghu Nagar, Pankha Road, Delhi. When she reached District Park Janakpuri the appellant came from behind and stopped her; she was on foot. He had a Chinese chopper in his hand. He gave chopper blows on different parts of her body; she fell down; she became unconscious. She was taken to the DDU hospital. A complaint was lodged.

4 Victim was subjected to a lengthy cross-examination. In her cross-examination, she admitted that she came to Delhi in December,

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2008 for her CS training. She denied the suggestion that she lived with the accused or had a friendly relationship with him or she wanted to marry him. She admitted that appellant's friends Bhanu, Sunil and Randheer Ojha were living with the accused. She stated that she used to tie Rakhi to Bhanu. She admitted that she stayed in a rented accommodation where Bhanu was also living at Savitri Nagar. She knew that Bhanu is the cousin of the appellant. In another part of her cross-examination she admitted that through an ATM account a sum of money was deposited in her account.

5 Vehement submission of the learned counsel for the appellant is that the parties were friendly and in love with one another that is why the family of the appellant deposited money in her account.

6 The injuries suffered by the victim were described by Dr. Alok, Senior Resident (Emergency) (PW-5). These injuries read as under:

- 1.CLW Middle ring finger left 3-4x2x1cm
- 2.CLW D 5-6 x 2.5x2 cm left forearm middle 1/3
- 3.CLW right left 5-6 x2x2 cm upper 1/3
- 4.CLW 15-20 cm x 6x2cm over left thigh groin area
- 5.Near total amputation right forearm from elbow

6. CLW almost total amputation with transverse resaction of humerus right.

7 CLW 15-20 cm x 6 x 2 cm in the left thigh groin area and injury on her arms which had led to amputation of her right forearm from elbow are grievous injuries at vital parts of her body.

8 Submission of the learned counsel for the appellant that these injuries were not at the vital parts of the victim and thus the offence under Section 307 of the IPC is not made out is negated by this document.

9 Dr.B.N.Mishra (PW-6), Medical Officer from Department of Forensic Medicine, DDU Hospital had also examined the weapon of offence which has been used to attack the victim and which had been seized from the appellant. It was a chopper made of steel with one edge blunt and other was sharp having monogram of “SHOAI FENG” which had a Chinese blade. The opinion of PW-6 after examination of this weapon evidenced that the injuries in fact had been caused by this chopper and injuries 2 to 6 even individually were sufficient to cause death as it was followed by haemorrhage.

10 Dr. Deepak Vats (PW-9) of the Apollo Hospital had also brought

the treatment papers of the victim. It were multiple open injuries on both her upper limbs, right and left thigh which were noted. Her discharge summary and her treatment record suggested that she was operated on 05.9.2009 and discharged from the hospital on 19.9.2010. The victim had also been summoned in the Court in the course of the proceedings. Her right limb from below the elbow was amputated; she was wearing an artificial limb. A suggestion has been given to the victim whether the compensation amount of Rs.5,00,000/- (which had been ordered by the Trial Court) could be enhanced if correspondingly the sentence of the appellant is reduced but this suggestion was wholly unacceptable to her. She categorically stated that no amount of monetary compensation could compensate her for the psychological trauma and emotional loss which she had suffered at the hands of the appellant.

11 In the statement of the appellant recorded under Section 313 Cr.P.C. he pleaded innocence stating that he had been falsely implicated. He stated that he was in love with the victim. The victim was injured by a robber and in fact he had chased the robber and had himself tried to take her to the hospital but he could not remove her to the hospital as

public persons started beating him.

12 In defense produced one witness, who was his counsel and who has stated that there was no evidence to be led in defence.

13 The defense emanating in the statement recorded under Section 313 Cr.P.C. is wholly unworthy of credit. His defense that the victim was robbed and attacked by a robber and it was the appellant who had attempted to chase the robber but was beaten up by the public is preposterous to say the least. Had thus been the case, the victim would not have implicated the appellant. The appellant who had been beaten by the public was found near the place of occurrence at the time of his arrest; chopper/gandasa was lying near him. The sketch of this weapon has been proved as Ex.PW-12/A. Its size, length and width showed the kind of perversion the appellant had in his mind which is fortified by the injuries suffered by the victim and the opinion of the doctor that it was this gandasa/Chinese chopper which had caused these injuries upon her which all establish that the conviction of the appellant under Section 307 of the IPC was well founded.

14 The brother of the victim Shyam Narayan Ohja was examined as PW-1. He had deposed that the accused used to forcibly stalk his sister.

He had visited their house in August 2009 threatening him with dire consequences in case he did not agree to the relationship of the appellant and the victim. He admitted that he was not an eye-witness but the fact that the appellant used to stalk his sister was a fact known to him and this has been reiterated by him.

15 The submission of the learned counsel for the appellant that this is a case of false implication because of love relationship between the appellant and the victim is nowhere borne out. This defense was rightly rejected by the Trial Judge.

16 Learned APP for the State has in fact brought to the notice of this Court the two judgments of the Apex Court reported as AIR 1995 SC 1066 E.K.Chandrasenan Vs. State of Karnataka ; AIR 1976 SC 2205 Nadir Khan Vs. State (Delhi Administration) to support his submission that the sentence in such a case should in fact be enhanced. Submission being that there were ample powers with the Appellate Court to enhance if the facts so demand. The powers of the Appellant Court undoubtedly under Section 386 of the Cr.P.C. are wide and they permit the Court to enhance the sentence where the need arise. Needless to state that a notice to show cause as to why sentence be not enhanced has to been

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given to the accused prior thereto.

17 This Court has already heard the arguments as noted supra. Appellant was also produced through production warrants and so also the victim. The appellant has suffered incarceration of about almost 7 years. The victim has also moved in life. The mental and physical trauma may not have been worn off and can probably never be washed away and her forthright submission before this Court that she would not wish for any monetary compensation in lieu of reduction of the period of incarceration qua the appellant is noted; this Court comes to the conclusion that the appellant deserves no leniency in sentence. At this stage this Court is also not inclined to enhance the sentence of the appellant noting that the appellant was a first time offender. Hopefully over the years he would after introspection feel remorseful and retributive. This was a first time offence of a perverted mind.

18 In this background while holding the conviction of the appellant the sentence is maintained.

19 Appeal is disposed of in the above terms.

INDERMEET KAUR, J

DECEMBER 11, 2015/ndn