

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Crl. Appeal S-1836-SB of 2003
Date of Decision : February 15, 2016

Dilshad	VERSUS	Appellant
State of Haryana		Respondent

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

Present : Mr. J.S.Cooner, Advocate
for the appellant.

Mr. Dhruv Dayal, Deputy Advocate General, Haryana.

None for the complainant.

T.P.S. MANN, J. (Oral)

The appellant was tried for committing offence punishable under Section 364 IPC. Vide judgment and order dated 18/21/8.2003, learned Additional Sessions Judge, Karnal convicted him for the aforementioned offence and sentenced him to undergo rigorous imprisonment for a period of seven years and to pay a fine of Rs.5,000/- and in default of payment of fine, to further undergo rigorous imprisonment for a period of six months.

The prosecution case, in nutshell, is that the appellant is the son-in-law of complainant Smt. Sona Devi. Said Sona Devi's son Jakir Hussain, aged about 20/21 years, was bachelor, though engaged to be married to a girl of village Anarpur. The appellant was not happy with the engagement of his brother-in-

law Jakir Hussain and, accordingly, he used to say that he would get him married at some other place. On 3.2.1999, Tikka ceremony of Jakir Hussain was held. On the date of occurrence, i.e. 13.2.1999, the appellant came to the house of his in-laws and took Jakir Hussain with him at about 4.00 p.m. saying that they were going to village Barara, i.e. the village of the appellant. Ten days later, Hasnuda, daughter of the complainant Sona Devi and wife of the appellant came to her parents' house from the matrimonial home. The complainant inquired from her about Jakir Hussain who stated that on 14.2.1999, her husband had left the house on the pretext that he was going to see off Jakir Hussain for going to village Uchana and for getting him board a bus. He returned after 2/3 hours. However, Jakir Hussain did not come back. It is also the case of the prosecution that the appellant had been insisting upon his mother-in-law to sell her one and half acres of land and he would purchase four acres of land in U.P. from those sale proceeds. However, mother-in-law of the appellant was not agreeing for the same. She used to state the appellant was a clever person, who was interested in her land and, accordingly, kidnapped her son Jakir Hussain and, thereafter, concealed him somewhere or murdered him.

Learned counsel for the appellant submits that the

appellant does not challenge his conviction under Section 364 IPC. However, it is submitted that the appellant has been facing the agony of criminal prosecution for the last about seventeen years. During his examination under Section 235 (2) Cr.P.C. before the trial Court, the appellant had stated that he had three minor children besides old aged parents who usually remained ill. There was none to look after his children and parents. It is also submitted that before being released on bail during the pendency of the appellant, the appellant had undergone a period of about two years and nine months. Prayer has, accordingly, been made for setting aside the remaining sentence of imprisonment of the appellant.

Learned State counsel has opposed the prayer made by the appellant by submitting that the facts of the case do not warrant reduction of sentence of imprisonment of the appellant.

Custody certificate dated 28.5.2014 issued by the jail authorities is already on the record. As per the same, the appellant had undergone an actual sentence of two years, three months and seventeen days. Besides, he had earned remission of six months and twenty seven days.

After hearing learned counsel for the parties and taking into consideration the totality of the circumstances, this Court is of the considered view that no useful

purpose will be served by sending the appellant behind the bars, once again, to serve the remaining sentence of imprisonment imposed upon him. Ends of justice would be amply met, if his substantive sentence of imprisonment is reduced to the one already undergone by him. At the same time, fine imposed by the appellant can be suitably enhanced.

Resultantly, the conviction of the appellant under Section 364 IPC is upheld. His substantive sentence of imprisonment is reduced to the one already undergone by him. The sentence of fine is enhanced from Rs.5,000/- to Rs.20,000/- and in default of the same, the appellant shall undergo rigorous imprisonment for one year. The amount of fine be deposited by the appellant within three months from today.

The appeal is, accordingly, disposed of.

February 15, 2016
amit rana

(T.P.S. MANN)
JUDGE