

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ CRL.A. 63/2017

STATE

..... Appellant

Through : Ms. Aashaa Tiwari, Additional
Public prosecutor for the state
with Sub- Inspector Pramod
Kumar, Police Station Shalimar
Bagh, Delhi

versus

ARSHDEEP SINGH

..... Respondent

Through : Mr. Bhaskar Vali, Advocate

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE P.S.TEJI

%

ORDER

15.11.2017

P.S.TEJI, J (ORAL)

1. By this appeal filed under Section 377 of Cr.P.C., the State seeks to challenge the order on sentence dated 10.08.2016, vide which the respondent has been awarded sentence of already undergone period with fine of Rs.1,00,000/-, in default of payment of fine to further undergo sentence for six months for the offence under Section 307 IPC; and the sentence of already undergone period with fine of Rs.2,50,000/-, in default of payment of fine to further undergo sentence for six months for the offence under Section 316 IPC. It was directed that the entire amount of Rs.3.5 Lacs, if deposited, be

released to complainant Balwinder Kaur after the expiry of period of appeal or as per the outcome of appeal. The respondent was convicted of the said offences vide judgment dated 01.08.2016, in respect of SC No.52575/15 in a case registered as FIR No.155/2013 under Section 316/307 of IPC, at Police Station Shalimar Bagh, Delhi.

2. The facts emerging from the record are that on the night intervening 17.04.2013 and 18.04.2013 at about 1.10 AM, police received a news that a Santro Car bearing no.DL 4C AG-0981 had collided against one tree near Prem Bari Bridge, Singhal Pur. ASI L.N. Sharma (PW-11) accompanied by Ct. Balakari, rushed to the spot and noticed the Santro Car in accidental condition. One injured Balwinder Kaur was taken to Fortis Hospital, Shalimar Bagh. The said injured was in the family way, and was carrying 8 months baby and due to the impact of the accident, the unborn child died in the womb. The respondent was also admitted in the hospital and he suffered injuries on his lips. On the basis of statement made by the respondent, FIR was registered under Section 279/337 IPC. The injured-Balwinder Kaur was declared fit to make statement on 20.04.2013 and through her complaint it came to fore that her husband/respondent and her in-laws were not satisfied with the dowry and used to comment and complain that substantial amount had not been spent on the marriage. The complaint also revealed that on 17.04.2013, her husband had come to her parental home to take her back and picked up a quarrel with her at her parental home also. She also divulged that while returning in Santro Car, respondent threatened

that he would kill her as well as the unborn child and would also kill himself. The respondent then gave fist punches on the abdominal region of his wife and deliberately struck the car against a truck and then against a tree.

3. On the basis of revelations made by the complainant, penal sections were altered from Sections 279/337 IPC to Section 307/316 IPC. After completion of investigation, charge sheet was filed in the Court.

4. Charges under Sections 307 and 316 IPC were framed against the accused/respondent to which he pleaded not guilty and claimed a trial.

5. Upon considering the facts, evidence led and the material placed on record, the respondent was held guilty and convicted by the learned Additional Sessions Judge, Delhi vide judgment dated 01.08.2016 and order on sentence was passed on 10.08.2016 vide which he was sentenced to the period of already undergone with total fine of Rs.3,50,000/- to be paid to his wife, if deposited. Feeling aggrieved by the same, the State has preferred the present appeal for enhancement of sentence.

6. The main grounds of challenge are that the learned Trial Court failed to appreciate that the sentence of only 19 days for an offence under section 307 IPC is extremely inadequate to the offence committed. The Id. Trial Court failed to appreciate that the offences committed by respondent/convict were serious, and he acted so

irrationally with the criminal intent that the complainant almost lost her life and an unborn child died in her womb. The trial court failed to appreciate that the imposition of such a minor sentence, would send a wrong message to the society. The Ld. ASJ passed the order on sentence without considering its effect on the social order in other cases. The social impact of the crime where it related to offences against women, and other offences involving moral turpitude or moral delinquency which have great impact on social order, and public interest, cannot be lost sight of and *per se* require exemplary treatment. In all, the State has prayed for enhancement of sentence of the respondent.

7. Learned Addl. PP for the State has submitted that in the instant case, apart from suffering injuries on the person of the complainant, an unborn child has also been caused to death by the act of the respondent and he has already been convicted under Section 316 IPC for the same. She has prayed for enhancement of sentence on the ground that adequate sentence must be awarded to the respondent consistent with the acts done by him. It is further submitted that undue sympathy would do more harm to the society and hence the sentence should be enhanced.

8. Per contra, learned counsel for the respondent has stated that the complainant happened to be wife of the respondent, and he has also suffered the mental agony and pain due to loss of his child. The respondent is the sole bread earner of his family. He has already paid a sum of Rs.3.5 lakhs to the complainant and if he is sent to jail at this

stage, his family will also suffer. There are old aged parents of the respondent in his family who are to be looked after by him only. It is submitted that the complainant, who was the wife of the respondent, had adequately been compensated. She was the victim of the actions attributed to the respondent, and even she was satisfied with the sentence, and did not want the respondent to be subjected to any further incarceration. Thus, no ground to enhance the sentence is made out.

9. We have heard the submissions made on behalf of both the sides.

10. It is apparent from the record that there was matrimonial discord between the respondent/accused and his wife. An altercation took place during the journey in the car on the day of incident. It is also apparent that due to the act done by the respondent, not only his wife/complainant suffered injuries on her person, but an unborn child has also lost his life. There is no quick answer to the pain a woman feels after losing an unborn child, regardless of circumstances. There is no denying the fact that both the wife and respondent have suffered from mental trauma. The victim has been the unborn child. He is not in this world and, in view of the settlement arrived at between the respondent and his wife, his cause is not being pursued by his mother. It is the obligation of the State to ensure that justice is done to him, and it has befallen on us to now deal with this difficult situation. The respondent/convict has been convicted under Section 307/316 IPC and sentenced for the said offences. The respondent/convict has not filed

any appeal against the conviction. As a result, the judgment of conviction is not disturbed.

11. The issue that arises for consideration in this appeal preferred by the State is, whether adequate sentence has been awarded to the respondent/convict by the Court below in view of his conduct and the other attending circumstances. We have given our thoughtful consideration to this peculiar situation. The incident took place in the heat of the moment during an argument between the respondent and his wife. He struck his wife-who was eight months pregnant in her abdomen. He banged car against another vehicle from behind and then struck a tree. The respondent's wife suffered injury and miscarriage. The respondent and his wife decided to separate and end their marriage. The respondent has paid the settlement amount to the wife and obtained mutual divorce. The wife has accepted the situation and has forgiven the respondent. It appears, the respondent has also felt remorse and undertook to accept his conviction and not to assail it. He agreed to suffer fines, which were deposited and made over to the wife-as compensation. The respondent's financial condition and his responsibilities towards his old parents have also been taken note of by the Ld. ASJ. We are of the view that in the above background, the sentence/fine imposed upon the respondent deserves to be enhanced.

12. The sentence provided under Section 307 IPC is life imprisonment and under Section 316 IPC is ten years imprisonment.

13. Counsel for the respondent/convict prayed that the respondent/

convict is ready to deposit the amount of Rs.3,50,000/- in an orphanage, to show the respondent's genuine remorse, and as an act of penance, for causing the death of his unborn child. It is submitted that the sentence already awarded by the trial court may not be enhanced.

14. In view of the peculiar facts and circumstances of the case and considering the submission made by the counsel for the respondent/convict as well as learned APP for the State, we are of the opinion that the sentence awarded to the respondent/convict under Section 307/316 IPC is on the lower side and he deserves to undergo minimum sentence of three years of imprisonment, in addition to the period already undergone (19 days).

15. Thus, the sentence awarded to the respondent/convict is enhanced to three years of imprisonment, in addition to the sentence awarded by the Court below. In the alternative, he is directed to deposit Rs.3,50,000/- in NPS School for Deaf and Dumb, Near Delhi Police Apartments, Mayur Vihar Phase-I, Delhi, an orphanage by way of seven installments in the sum of Rs.50,000/- each. He is directed to report to the SHO concerned to furnish the receipt of deposited amount by the 10th day of each calendar month, who shall verify the same and submit his report before the trial court, failing which, he shall surrender before the concerned Court to serve the remaining period of imprisonment.

16. A copy of this order be sent to the Trial Court as well as NPS School for Deaf and Dumb, Near Delhi Police Apartments, Mayur

Vihar Phase-I, Delhi-the orphanage for information and necessary steps.

17. With aforesaid directions, the present appeal filed by the State is disposed of.

P.S.TEJI, J.

VIPIN SANGHI, J.

NOVEMBER 15, 2017

pkb

