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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CRL.A. 901/2016

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Date of Judgment: 29th May, 2017

MAIMO

..... Appellant

Through : Mr.Sandeep Kumar, Adv.

versus

STATE (NCT OF DELHI)

..... Respondent

Through : Mr.Rajat Katyal, APP for the State.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE REKHA PALLI

G.S. SISTANI, J. (ORAL)

1. This is an appeal under Section 374 (2) of the Code of Criminal Procedure, 1973 ('Cr.P.C.') against the judgment of conviction dated 24.02.2016 and order on sentence dated 25.02.2016 whereby the appellant stands convicted for the offence under Section 201 of the Indian Penal Code ('IPC') and sentenced to undergo rigorous imprisonment for a period of five years and fine of Rs. 2,000/- in default of payment of fine, simple imprisonment for a period of three months.

2. Learned counsel for the appellant, at the outset, submits that the appellant does not challenge the order of conviction and prays that the order on sentence may be modified to the period already undergone which is two years. Learned counsel for the appellant submits that the appellant is the mother of co-convict and wife of the deceased.

3. The case of the prosecution as noticed by the Trial Court, is as under:

"1. Case of prosecution in brief is that on 24.07.2012 at about 5:30 PM, an information was received from Police Control Room (in short "PCR") about one person having been stabbed

by sua at A-47, Basti Nizamuddin, Kot Mohalla, Hazrat Nizamuddin, New Delhi. The said information was recorded vide DD No.18A and the same was sent to SI Ajay Kumar (PW-21) through Ct.Ram Avtar (PW-15) for necessary action.

2. SI Ajay Kumar (PW-21), on receipt of DD No.18A, went to the spot i.e. A-47, First Floor, Kot Mohalla, Hazrat Nizamuddin, New Delhi alongwith other police officials, where they found that several public persons had gathered at the spot. They found that one person was lying on a mat inside the house situated at First Floor of building. Cut marks were observed on his neck, while some stab wounds were noticed on other parts of the body. Blood was scattered on the floor as well as on walls of the room. One poker (sua) was lying in two parts i.e. iron rod and handle separately. As per PW-21 SI Ajay Kumar, the spot appeared to have been washed off. He prepared rukka Ex.PW-21/A on the basis of DD No.18A (Ex.PW-21/B) and gave the same to Ct.Shahid for registration of FIR. Crime team was also called. Inspector Binay Singh (PW-22) IO of the case prepared site plan. Blood sample was picked from spot with the help of gauze. Incriminating materials found lying at the spot were seized.

3. Matter was investigated as per law. PW-22 Inspector Binay Singh conducted various stages of investigation in the matter. Accused Danish and Maimo were found involved in the commission of offence in the case. Therefore, on conclusion of investigation, they were charge sheeted to face trial.

4. Accused persons, on their appearance before the court of learned MM, were supplied copy of charge sheet and complete set of documents and thus, compliance of section 207 of The Code of Criminal Procedure, 1973 (in short "Cr.P.C.") was made."

4. In order to bring home the guilt of the appellant and her co-convict, the prosecution examined 22 witnesses in all; statement of the accused persons was recorded under Section 313 of the Cr.P.C and in their defence, only one witness was examined.

5. Learned counsel for the appellant submits that the appellant has been falsely implicated in this case. Mr.Kumar submits that the Trial Court has failed to consider that the entire case of the prosecution is based

on circumstantial evidence and there is no eye witness and thus, it cannot be said that this appellant was seen wiping the blood from the floor of the room by Zahiruddin (PW-5). Learned counsel further submits that the appellant is an uneducated person and is the unfortunate wife of the deceased and mother of the co-convict. It is contended that even assuming that the blood from the floor was wiped, the same was without any consequence as the body was lying and no steps were taken by the appellant to hide the body or to conceal the crime.

6. It is further submitted that the wiping of the blood from the floor would not have in any way screened the offender as has been held by the Trial Court and she did not cause any disappearance of the evidence. Learned counsel further submits that this fact gains importance for the reason that this appellant was not charged under Section 302 IPC unlike the co-convict.

7. Learned counsel for the State, however, submits that there is no infirmity in the judgment and order on sentence which would warrant interference by this Court. Having regard to the nature of crime in which the son has killed his own father, the mother/appellant herein was seen by PW-5 wiping the blood from the floor and resultantly, the Trial Court has correctly reached the conclusion of guilt under Section 201 IPC.

8. We have heard learned counsel for the parties and considered their rival submissions. We may notice that the learned counsel for the appellant on instructions, has already made a statement that he does not challenge the order of conviction but has only prayed that keeping in view the facts of the present case, the order on sentence may be modified to the period already undergone. Yet, we deem it appropriate to examine the matter on merits to satisfy our conscience.

9. We have noticed hereinabove that this is a very unfortunate matter where the son/Danish, as per the prosecution, has killed his own father and the appellant herein is the wife of the deceased and mother of the co-convict. The guilt of the appellant herein is duly established from the testimony of the brother of the deceased Zahiruddin (PW-5) who had seen the main accused Danish leaving the house after the commission of the offence in the case. He deposed that on 24.07.2012 at about 4:30 PM, he was present at his meat shop at A-47, Ground Floor, Basti Hazrat Nizamuddin Kot Mohalla, when he saw the co-convict Danish coming down the stairs. Later, he heard the cry of the appellant, who called him and he went there. He then saw the appellant wiping the floor and noticed blood lying there. The appellant said to PW-5: “*apke bhai ne kya kar diya* (look what your brother has done)”. The witness further deposed that he saw his brother Sadruddin (deceased) lying on a mat having his throat slit to a large extent.

10. Based upon the testimony of Zahiruddin (PW-5) and the recovery of the wiper and *pochha* (cleaning cloth) used for wiping the floor at the instance of the appellant, *ex facie* we are satisfied with the findings of the Trial Court.

11. We have already recorded that Mr.Kumar, learned counsel for the appellant, had already stated that he does not press the challenge of the order of conviction but seeks modification of the sentence. Accordingly, the only point which remains for us to decide is whether the sentence imposed is commensurate with the culpability of the appellant.

12. We note that the Trial Court in its order on sentence dated 25.02.2016 found that the appellant had caused the disappearance of evidence of her own husband and thus, awarded the harsh penalty of rigorous imprisonment for five years.

13. The law with regard to sentencing has been a subject matter of various decisions. In a recent decision rendered by a coordinate bench of this Court, of which one of us (G.S. Sistani, J.) was a member, in ***Ramjee Lal v. State (Govt of NCT) Delhi***, CrI.A 599/2013 dated 04.05.2017 had after discussing numerous judgments of the Supreme Court and this Court had concluded as under:

“21. From the foregoing conspectus of judicial pronouncements, it is clear that sentencing vests great discretion in the hands of the judge, which is to be exercised in a sound manner while balancing the aggravating and mitigating circumstances of a case. There cannot be any uniform policy which may be resorted to as sentencing involves a comprehensive view of both the crime and the criminal allowing for a myriad situations or questions which may fall for the Court. All the while the doctrine of proportionality must be adhered as both deficient and excessive punishments undermine the criminal justice system.”

14. We find force in the submissions made by counsel for the appellant that since the appellant did not remove the dead body and merely because she had wiped blood from the floor, cannot be taken as an effort to screen the offender.

15. Taking into consideration the submissions made and the peculiar facts of this case, we are of the view that the ends of justice would be met if the sentence of the appellant is modified to the period already undergone.

16. Accordingly, the appeal is allowed in part.

17. The appellant shall be released, if not wanted in other case. The appeal and application being CrI.M.B. 1721/2016 are disposed of.

18. Copy of this order be sent to the concerned Superintendent, Jail and also be given dasti.

G.S.SISTANI, J.

REKHA PALLI, J.

MAY 29, 2017

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