



2026:DHC:3403-DB



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

Reserved on: 10th March, 2026
Pronounced on: 24th April, 2026
Uploaded on: 24th April, 2026

+ **CRL.A. 598/2015**

MUSKAN

.....Appellant

Through: Mr. Manoj Garg & Nazim Ali, Advs.

versus

STATE (GOVT. OF NCT OF DELHI) & ANR.Respondents

Through: Mr. Ritesh Kumar Bahri, APP with
Ms. Divya Yadav & Mr. Lalit Luthra,
Advs.

Mr. Ravi Nayak, Mohd. Faisal and
Mr. Abhishek K. Tanwar, Advs. for
R2 with Respondent No.2-in-person.

CORAM:

JUSTICE PRATHIBA M. SINGH

JUSTICE MADHU JAIN

JUDGMENT

MADHU JAIN, J.

1. The present criminal appeal has been preferred by the injured/complainant under Section 372 of the Code of Criminal Procedure, 1973, (hereinafter 'CrPC') assailing the order on sentence dated 24th February, 2015 passed by the Id. Additional Sessions Judge, South-East District, Saket Courts, New Delhi in Sessions Case No. 94/2014 arising out of FIR No. 490/2011, Police Station Jamia Nagar, whereby the Respondent No.- 2 /Accused, though convicted for the offence punishable under Section 307 Indian Penal Code, 1860 (hereinafter 'IPC'), has been sentenced to undergo simple imprisonment for a period of three years along with fine.



2. The grievance of the Appellant/complainant in the present appeal is limited to the quantum of sentence. It is the case of the Appellant/complainant that the sentence awarded by the Id. Trial Court is grossly inadequate, disproportionate to the gravity of the offence, and not in consonance with the settled principles governing sentencing under Section 307 IPC.

3. It is pertinent to note that the present appeal arises out of the same Impugned Order of conviction and order on sentence which were the subject matter of challenge in the connected appeal being *CRL.A. 316/2015*, titled *Asad Arif v. State (NCT OF DELHI)*, filed by the accused. While the earlier appeal pertained to the correctness of conviction, the present appeal concerns itself solely with the question of adequacy of sentence.

4. For the sake of brevity and to avoid repetition, the factual matrix of the present appeal is being recorded in terms identical to the connected matter being *CRL.A. 316/2015* titled *Asad Arif v. State (NCT OF DELHI)*, inasmuch as the incident, evidence, and findings remain the same. The only distinction between the two appeals lies in the scope of adjudication, while one is against the conviction, the present appeal pertains to enhancement of sentence.

FACTUAL MATRIX:

5. The case of the prosecution, in brief, is that in the intervening night of 19th September 2011, at about 12:02 a.m., information was received at Police Station Jamia Nagar regarding admission of one Ms. Muskan in Holy Family Hospital in an injured condition. The said information was recorded *vide* DD No. 3A and entrusted to the Investigating Officer for necessary



action. The Investigating Officer, along with accompanying police officials, proceeded to the hospital and collected the Medico-Legal Certificate of the injured.

6. As per the statement of the injured PW- 4 Ms. Muskan, the incident is stated to have occurred on the night of 18th September 2011 at about 10:45 p.m., when she had gone to the back room of her residence to take water from the refrigerator. At that time, the Appellant/complainant, who was known to her as a neighbor, was allegedly standing outside the window opening. It is alleged that upon seeing her, the Appellant/complainant threatened her, stating that since she had refused his proposal of marriage, he would not spare her, and immediately thereafter fired a shot at her through the window. The bullet struck the upper portion of her thigh, resulting in profuse bleeding. Thereafter, the Appellant/complainant is stated to have fled from the spot. The relevant portion of the complaint dated 19th September, 2011 is reproduced hereinbelow:

“बयान किया कि मैं यहाँ उपरोक्त पते पर अपने परिवार के साथ रहती हूँ और पढ़ाई कर रही हूँ जो कल 18, 19/9/2011 की रात वक्त करीब 10.45 बजे मैं अपने घर में पीछे वाले कमरे में फ्रिज से पानी लेने गई थी तो मैंने देखा कि खिड़की के बाहर असद आरिफ नाम का लड़का खड़ा था जो मोहल्ले का ही रहने वाला है जिसको मैं पहले से जानती हूँ उसने मुझे देखते ही कहा कि तूने मुझसे शादी करने से मना करके अच्छा नहीं किया अब मैं तुझे जिन्दा नहीं छोड़ूँगा जब तक मैं कुछ समझ पाती असद आरिफ ने मेरे ऊपर गोली चला दी और वह भाग गया गोली मेरी दाहिनी जांघ के ऊपरी हिस्से में लगी और जोर से खून बहने की वजह से मेरी सलवार खून से लथपथ हो गई।”

7. It is the prosecution's case that upon sustaining the injury, the complainant raised an alarm and was immediately attended to by her family members, including her sister Safiara, who, along with others, shifted her to



Holy Family Hospital for treatment.

8. The MLC bearing No. 24438 of the injured recorded a gunshot injury on the right thigh, described as a lacerated wound measuring approximately 4.5X2X1 cm, and the injury was subsequently opined to be grievous in nature. The said MLC bearing No. 24438 is reproduced here under:

Phone : 2645900-909
26332800-809

HOLY FAMILY HOSPITAL, NEW DELHI-110025
MEDICO-LEGAL REPORT

O.P.D. No. SC11-024438 Name Muskan
 L.P.D. No. 274/11 Father/Husband's Name MD. Mustakeen Ahmad
 Date & Time of Arrival 23.01 Address R-274-Jah No (3) S/S Syed Road
Jafar Bastata Jammu New Delhi
 Name of Police Station 100 Religion Islam Age 21 Sex F
 Police Report No. 186 Comt Vinod Occupation Student
 Date Police Informed 18.1.11 Mark of Identification old linear scar (R)
Eye brow: multiple mole @ cheek
 Name and address of Accompanying Person Sister Same area same address

Place of Accident at home R-274-Jah No (3) S/S Syed Road Jafar Bastata Jammu New Delhi
 History Selected Mr. Mustakeen Ahmad injured his wife while doing house hold work at around 10:30pm when she was attacked from behind by some unknown person with unknown object while she was on ground floor and window of Room was open No 40.
 Local Examination Left hand & Right hand / head injury
 On Examination L/E (Thigh post lat) elliptical ~ 4.5 x 2 x 1 cm (R) Thigh Laceration
 Investigations X-Ray @ Thigh - AP & Lat Ex. hw 5/11

Condition at discharge Stable/oriented
 Final diagnosis GUN SHOT INJURY (R) Thigh
 Nature of injuries: Simple (Grievous) Dangerous
 Kind of Weapon used or poison suspected in case of poisoning _____ Date of Discharge _____
 If admitted: Date of admission _____
 Remarks H/o attacked on her with unknown object. Patient admitted foreign Body (ONE BULLET) removed from (R) thigh area Bed discharged.
 Body (ONE BULLET) removed from (R) thigh area Bed discharged.

Examining Medical Officer
Holy Family Hospital, New Delhi
[Signature]

RTI OF MUSKAN
Mailed hit for state news @ 10AM
Sunder 19.1.11 DR HIRAPATI SHARMA

“On Examination: Stable, conscious & oriented. Vitals stable.

L/E (Local Examination) (R) Thigh post lat: elliptical ~ 4.5 x 2 x 1 cm (R) Thigh. Laceration.

Investigations: X-Ray (R) Thigh - AP & Lat.

Diagnosis and Conclusion

- Condition at discharge: Stable
- Final diagnosis: GUN SHOT INJURY (R) Thigh
- Nature of Injuries: Grievous (Circled)
- Remarks: H/o attacked on her with unknown object. Pt (Patient) was admitted foreign Body (ONE BULLET) removed from (R) thigh and



discharged.”

9. The injured was initially not in a condition to give a statement due to the influence of heavy dosage of drugs as the doctor had suggested surgery. Subsequently her statement was recorded upon being declared fit. Based on the said statement, a *rukka* was prepared and the FIR No. 490/2011 under Section 307 IPC came to be registered at Police Station Jamia Nagar.

10. Upon completion of investigation, the charge-sheet under Section 307 IPC was filed before the Id. jurisdictional Magistrate and the matter, being triable exclusively by the Court of Sessions, was committed to the Sessions Court. Thereafter, charge under Section 307 IPC was framed against the Appellant/complainant on 18th January 2012, to which he pleaded not guilty and claimed trial.

11. In order to establish its case, the prosecution's examined thirteen witnesses, including the injured witness (PW-4), medical experts, police officials, and other formal witnesses.

12. The central pillar of the prosecution's case was the testimony of PW-4 Ms. Muskan, who, in her examination-in-chief, reiterated the allegation that the Appellant/complainant fired a gunshot at her from outside the window after threatening her. She also identified the Appellant/complainant and attributed a clear motive arising out of refusal of marriage. The relevant portion of her statement and of the other relevant witnesses of the of the prosecution witness are reproduced hereinbelow:

<i>Witnesses</i>	<i>Statement In Chief Examination</i>	<i>Statement In Cross Examination</i>
PW- 4	<i>...I knew Asad Arif</i>	<i>...The reason of</i>



Muskan (Injured)	<p>prior to the incident as he is resident of our area (Mohalla). Asad Arif ne mujhe dekhte hi kaha ki tune mujhse shaadi se mana karke acha nahi kiya, ab main tujhe zinda nahi chodunga, itni dair mein main kuch samajh pati, usne mujh par goli chala di, jo meri dahini jaang ke uppar lagi, usne goli banduk se chalai thi, jo banduk ko phechan sakti hu. (Accused Asad Arif after seeing me said that you had not do better for you by refusing marry with me and then he fired a shot from his gun, which hit on the upper portion of my right thigh). The accused Asad Arif after sustaining gun shot injury run away from there.</p> <p>...After registration of the FIR the family member of the accused and their relatives used to pressurize me and my family to arrive at compromise with the accused. In</p>	<p>animosity between accused and me is that I had refused to marry him. Safiara, my sister is elder to me and I am younger to Safiara.</p> <p>...On the date of incident, there was no marriage proposal of Safiara. Accused persons had brought the proposal for my marriage. It is wrong to suggest that there was ever any proposal by the accused person for the marriage of my elder sister Safiara. I was present at my house when the marriage proposal was brought by the accused persons. The marriage proposal by the accused persons was given in the month of 21st October 2009. I rejected the proposal through my mother. I also personally told this fact to the accused.</p> <p>XXX</p> <p>...I had disclosed the address and parentage of accused Asad Arif in my statement Ex. PW4/A to the police. I have knowledge as to</p>
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	<p><i>this regard, a specific complaint was also lodged by my sister Safiara in the PS Jamia Nagar where a DD No. 38-B was recorded.</i></p>	<p><i>when the accused was arrested by the police.</i></p> <p><i>XXX</i></p> <p><i>...I cannot tell how much is the height of the window of my room. Sometime, I had stood along side the window in order to see outside. The height of lower side starting point of the window from the floor inside the room is equivalent to the height of my waist. There is a chhajja above the vertical end point of window. I am 5'3".</i></p> <p><i>XXX</i></p> <p><i>...There was friendship between me and accused. I started my friendly relationship with accused in the year 2009. Our acquaintance initiated through social networking sites.</i></p> <p><i>...The accused had never come to my house to meet me on an earlier occasion prior to the incident, in my presence. My parents had also not told me about the visit of the accused at our residence, in my</i></p>
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		<p><i>absence, prior to the incident. Accused had not visited me at my residence, or in the hospital, even after the incident. Neither me nor my family member had ever visited the house of the accused after the incident. Before the incident, neither me nor my family member visited the house of accused. We met each other five or six times in the absence of our known. Voln. The said meetings were at a public place. I never met accused on a specific place or occasion. I am aware that accused also have some friends.</i></p> <p><i>...I had gone on an outing with the accused but in a group in which other friends of accused were also present. None of my friend (male or female) had accompanied with me in the said outing.</i></p> <p style="text-align: center;"><i>XXX</i></p> <p><i>...I had participated in the group photo shoot at Agra. I do not recollect whether I</i></p>
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		<i>participated in the photo shoot uniquely with the accused only.</i>
PW- 6 Sh. Mustakeer Ahmed	<p><i>On 18.09.2011, at about 10:45pm, I was present at my house in the drawing room. All of a sudden, I heard firing of shot (goli chalne ki awaz aai) from just behind my house in the service lane. I went backside towards room situated on the back side of the drawing room. In the room adjoining the service lane, I saw that my daughter namely Muskaan was crying and weeping. She was nervous. I saw that her salwar was soaked with blood. On asking, how it happened. Muskaan told me that a boy named Asad Arif had fired a shot from the backside window. He caused injuries with the bullet to her and thereafter, had ran away.</i></p> <p style="text-align: center;">XXX</p> <p><i>On 17.09.2011 at about 07:30pm, when I was returning back from the Mosque after</i></p>	<p><i>... I have not told the incident of 17.09.2011 to the police while recording statement u/s 161 Cr.P.C. I have not told the event to the police about 17.09.2011 because the second day, the incident has taken place due to which, I was mentally disturbed and I could not tell the police. I am being treated for mental tension till date. After the incident. I became mentally disturbed.</i></p>



	<p><i>offering the Namaaz, on the way, Asad Arif restrained my way (raaste main gher liya) and told me that Muskaan had refused to marry him and therefore, he would enter her house and fire a shot on her. (Muskaan ne mujhse shaadi karne se mana kiya, woh ab ghar main ghus ke goli maarega).</i></p>	
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13. The medical evidence, as led through PW-3 and PW-11, established that the injury sustained by the complainant was a gunshot injury and that a bullet was recovered during medical treatment. The nature of the injury was opined to be grievous. The relevant medical opinion made by PW- 3 Dr. Tirupati Ranjan Shukla and PW- 11 Dr. Vipul Sood are reproduced hereinbelow:

Witnesses	Statement In Chief Examination	Statement In Cross Examination
PW- 3 Dr. Tirupati Ranjan Shukla	<p><i>... I medically examined Muskan d/o Mohd. Mustaqeem Ahmed vide MLC No. C11024438, which is Ex.PW3/A, bears my signature at point-A. She was brought to the hospital by her sister Samiara. On</i></p>	<p><i>The salwar worn by the patient was handed over to the Police by me, however; it was put off by the attending staff nurse. I had seen some torn area in the salwar. I cannot say whether torn area in</i></p>



	<i>examination, injuries over right posterior lateral thigh (elliptical shaped) wound nearly 4.5 x 2 x 1 cm in size lacerated type of wound. Some ooze was there. X-ray of relevant area was done at causality. Some radio opaque shadow was found and therefore, patient was admitted to the hospital for further exploration on 00:24 hours on 19.09.2011. One bullet was found which was removed by the plastic surgeon Doctor Vipul Sud. She was discharged on 21.09.2011.</i>	<i>the salwar was burnt or not because it was soaked with blood.</i>
PW- 11 Dr. Vipul Sud	<i>...I opined that injury caused by Ms. Muskan was not sufficient to cause death in ordinary course of nature.</i>	

14. The prosecution also relied upon the recovery of the blood-stained clothes and the bullet, along with the forensic examination reports, to corroborate the ocular version.

15. After completion of the prosecution evidence, the statement of the Appellant/complainant under Section 313 CrPC was recorded, wherein he denied the allegations and claimed false implication. The defence set up by the Appellant/complainant was that there was no such incident of firing and



that he had been falsely implicated due to personal disputes arising out of matrimonial proposals involving the complainant and her family.

16. In defence, the Appellant/complainant examined four witnesses, including himself, to support the plea that the relations between the parties were cordial and that the alleged incident was fabricated. The defence also sought to suggest that the marriage proposal was for the complainant's sister and not the complainant, and that the present case was a result of personal animosity. The relevant portion of the statements of the defence witnesses are reproduced hereinbelow:

DW-1 Ms. Khansa Sadiya (Cousin sister of the accused)	<i>The family of Asad Arif and my family are living in the same building. We are residing at the first floor and family of Asad Arif is residing at ground floor. I was married 06.02.201.</i>	.
DW- 3 Asad Arif (Accused)	<i>...On 15.09.2011, Muskaan had visited my sister Sadiaya Arif's house on the occasion of birthday of her daughter, where we had met each other after conclusion of function. She took me aside and expressed her desire to go out of Delhi with her but I refused to accompany her. When she insisted</i>	



	<p><i>and forced then I asked her to ask her brother or cousin to accompany, then I would accompany her. She was not ready and asked me to take any of my friend, who could accompany us. She agreed to that</i></p> <p style="text-align: center;">XXX</p> <p><i>...On the way from Agra to Delhi, Muskaan inquired from me, as to why I was marrying with her sister Safiara and asked me to marry with her. She told me that she would convince and make her family members understand.</i></p>	
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FINDINGS OF THE LEARNED TRIAL COURT:

17. Upon appreciation of the oral and documentary evidence on record, the Id. Trial Court came to the conclusion that the prosecution had successfully proved its case beyond reasonable doubt. The testimony of the injured witness was found to be credible and corroborated by medical evidence.

18. The Id. Trial Court held that the testimony of PW-4 stood corroborated by the medical evidence and by the testimony of PW-6. The



presence of the Appellant/complainant at the spot and his identity were held to be duly established.

19. The defence taken by the Appellant/complainant was rejected by the Id. Trial Court as improbable. The Id. Trial Court also held that the absence of recovery of weapon of offence was not fatal to the prosecution case in view of the consistent ocular and medical evidence.

20. On the aspect of intention, the Id. Trial Court held that the act of firing a gunshot at the complainant from close range clearly demonstrated the intention to cause death, thereby attracting the offence under Section 307 IPC.

21. Accordingly, the Id. Trial Court concluded that the prosecution had proved its case beyond reasonable doubt and convicted the Appellant/complainant under Section 307 IPC. The Appellant/complainant was thereafter sentenced to simple imprisonment for three years along with fine.

SUBMISSIONS ON BEHALF OF THE APPELLANT:

22. The Id. counsel for the Appellant/complainant submits that the Impugned Order on Sentence dated 24th February, 2015 is strikingly inadequate. It is submitted that a lenient sentence of three years' simple imprisonment fails to reflect the gravity of an offence punishable under Section 307 IPC, particularly when committed with a firearm.

23. It is further submitted that the present case involves a grave offence of attempt to murder by use of a firearm, which cannot be treated as a routine case of assault.

24. The complainant sustained a gunshot injury, which has been



medically opined to be grievous in nature. It is further submitted that a bullet was embedded in her body, necessitating surgical intervention, and the impact of the injury continues to affect her even till date.

25. The Id. counsel submits that the long-term physical and psychological trauma suffered by the complainant is a relevant factor which ought to have been duly considered by the Id. Trial Court while determining the sentence.

26. It is further contended that the proviso to Section 372 CrPC, which confers a right of appeal upon the victim, ought to be interpreted in a purposive manner so as to advance the cause of victim justice. It is submitted that where the sentence imposed is grossly inadequate and fails to reflect the gravity of the offence, the same would fall within the broader ambit of ensuring complete justice to the victim.

27. The Id. counsel submits that the technical objection as to maintainability ought not to impede the Court from exercising its appellate jurisdiction to ensure that the sentence imposed is commensurate with the gravity of the offence and the surrounding circumstances.

28. It is further submitted that the powers of the Appellate Court under Section 386 CrPC are wide and plenary in nature, and once the matter is before the Court, it is open to the Court to examine the correctness, legality and propriety of the sentence imposed and to alter the same, including enhancement thereof, in an appropriate case.

29. The Id. counsel has also addressed the aspect of delay and submits that the delay in trial and disposal of the appeal cannot be treated as a mitigating circumstance in favour of the accused.

30. It is submitted that such delay is attributable to systemic factors, including multiple adjournments and procedural constraints, and cannot



enure to the benefit of the accused.

SUBMISSIONS ON BEHALF OF THE RESPONDENTS:

31. *Per contra*, the Id. counsel appearing for the Respondent/Accused, opposes the present appeal seeking enhancement of sentence. He submits that the proviso to Section 372 CrPC confers a strictly circumscribed right of appeal upon a victim, limited to three specific contingencies: (i) an order acquitting the accused; (ii) a conviction for a lesser offence; or (iii) the imposition of inadequate compensation.

32. It is further contended that the statutory framework does not provide any right to a victim to seek enhancement of sentence, which is specifically governed by Section 377 CrPC and is exercisable only at the instance of the State.

33. The Id. counsel submits that the right of appeal being a creature of statute, cannot be expanded beyond the express provisions of law. In the absence of a statutory provision enabling a victim to seek enhancement of sentence, the present appeal is not maintainable.

34. The Id. counsel further places reliance upon *Parvinder Kansal v. State (NCT OF DELHI) And. Anr., (2020) 19 SCC 496* to contend that the scope of Section 372 CrPC does not extend to challenging adequacy of sentence, and that such power lies exclusively with the State under Section 377 CrPC.

35. It is further submitted that the Id. Trial Court has exercised its sentencing discretion judiciously, after considering both aggravating and mitigating circumstances.

36. The Id. counsel submits that the offence under Section 307 IPC



provides for punishment which may extend to ten years or life imprisonment, and does not prescribe any minimum mandatory sentence. Therefore, the sentence of three years' simple imprisonment cannot be said to be illegal or per se inadequate.

37. The Id. counsel further submits that as per the nominal roll, the accused has already undergone a substantial part of the sentence imposed upon him.

38. In this regard, reliance is placed upon the order of Supreme Court in *Sonadhar v. State of Chhattisgarh., 2021 SCC OnLine SC 3683*, to contend that where an accused has undergone a significant portion of the sentence and does not seek to contest the conviction, the Court may consider maintaining the sentence already undergone rather than enhancing it.

39. The Id. counsel further submits that the Id. Trial Court has already directed payment of substantial compensation to the complainant, which addresses the victim centric aspect of sentencing. It is contended that instead of enhancing the custodial sentence, the ends of justice can be adequately met by ensuring appropriate compensation to the victim.

ANALYSIS AND FINDINGS:

40. The Court has considered the matter.

41. This Court has considered the submissions advanced by the Id. counsel for the parties and has perused the record.

42. At the outset, before adverting to the merits of the prayer for enhancement of sentence, it is necessary to examine the preliminary objection raised by the Respondent as to the maintainability of the present appeal under Section 372 CrPC.



43. The present appeal has been preferred by the injured/complainant invoking the proviso to Section 372 CrPC, seeking enhancement of sentence imposed upon the accused. Section 372 CrPC is reproduced hereinbelow:

Section 372. No appeal to lie unless otherwise provided.

No appeal shall lie from any judgment or order of a Criminal Court except as provided for by this Code or by any other law for the time being in force:

¹[Provided that the victim shall have a right to prefer an appeal against any order passed by the Court acquitting the accused or convicting for a lesser offence or imposing inadequate compensation, and such appeal shall lie to the Court to which an appeal ordinarily lies against the order of conviction of such Court.]

44. A plain reading of the aforesaid provision makes it evident that the statutory right conferred upon a victim is limited in scope and is circumscribed to three specific contingencies, namely: (i) acquittal of the accused, (ii) conviction for a lesser offence, and (iii) imposition of inadequate compensation.

45. Significantly, the provision does not contemplate or provide for a right of appeal by the victim on the ground of inadequacy of sentence.

46. The scheme of CrPC makes a clear distinction in this regard. While the proviso to Section 372 confers a limited right upon the victim, the power to seek enhancement of sentence is specifically provided under Section 377 CrPC, which can be invoked only by the State. Section 377 CrPC is reproduced hereinbelow:



“Section 377. Appeal by the State Government against sentence

(1) Save as otherwise provided in subsection (2), the State Government may, in any case of conviction on a trial held by any Court other than a High Court, direct the Public Prosecutor to present¹ an appeal against the sentence on the ground of its inadequacy-
(a) to the Court of Session, if the sentence is passed by the Magistrate; and
(b) to the High Court, if the sentence is passed by any other Court.

XXX

(3) When an appeal has been filed against the sentence on the ground of its inadequacy, the Court of Session or, as the case may be, the High Court shall not enhance the sentence except after giving to the accused a reasonable opportunity of showing cause against such enhancement and while showing cause, the accused may plead for his acquittal or for the reduction of the sentence.”

47. The statutory provisions are therefore, clear and unambiguous, that the right to seek enhancement of sentence is not vested in the victim, but exclusively in the State.

48. The Supreme Court in *Parvinder Kansal v. State (NCT of Delhi)*, (2020) 19 SCC 496, has categorically held that the right of appeal under Section 372 CrPC is limited and does not extend to challenging the adequacy of sentence. The relevant paragraphs from the said judgement are reproduced hereinbelow:



8. Chapter XXIX of the Code of Criminal Procedure, 1973 deals with “Appeals” and Section 372 makes it clear that no appeal to lie unless otherwise provided by the Code or any other law for the time being in force. It is not in dispute that in the instant case appellant has preferred appeal only under Section 372 CrPC. The proviso is inserted to Section 372 CrPC by Act 5 of 2009. Section 372 and the proviso which is subsequently inserted read as under:

“372. No appeal to lie unless otherwise provided.— No appeal shall lie from any judgment or order of a criminal court except as provided for by this Code or by any other law for the time being in force:

Provided that the victim shall have a right to prefer an appeal against any order passed by the court acquitting the accused or convicting for a lesser offence or imposing inadequate compensation, and such appeal shall lie to the court to which an appeal ordinarily lies against the order of conviction of such court.”

A reading of the proviso makes it clear that so far as victim's right of appeal is concerned, same is restricted to three eventualities, namely, acquittal of the accused; conviction of the accused for lesser offence; or for imposing inadequate compensation. While the victim is given opportunity to prefer appeal in the event of imposing inadequate compensation, but at the same time there is no provision for appeal by the victim for questioning the order of sentence as inadequate, whereas Section 377 CrPC gives the power to the State Government to prefer appeal for enhancement of sentence. While it is open for the State Government to prefer appeal for inadequate sentence under Section 377 CrPC but similarly no appeal can be maintained by victim



under Section 372 CrPC on the ground of inadequate sentence. It is fairly well-settled that the remedy of appeal is creature of the statute. Unless same is provided either under Code of Criminal Procedure or by any other law for the time being in force no appeal, seeking enhancement of sentence at the instance of the victim, is maintainable. Further we are of the view that the High Court while referring to the judgment of this Court in *National Commission for Women v. State (NCT of Delhi)* [*National Commission for Women v. State (NCT of Delhi)*, (2010) 12 SCC 599 : (2011) 1 SCC (Cri) 774] has rightly relied on the same and dismissed the appeal, as not maintainable.

49. The Supreme Court, while interpreting the proviso to Section 372 CrPC, has unequivocally observed that the victim's right of appeal is confined to the contingencies expressly provided under the statute, and that there is no provision enabling the victim to seek enhancement of sentence. It has further been clarified that the remedy for inadequate sentence lies under Section 377 CrPC, which is available only to the State.

50. The Id. counsel for the Appellant/complainant has sought to contend that this Court, in exercise of its powers under Section 386 CrPC, may enhance the sentence notwithstanding the objection as to maintainability.

51. Section 386 CrPC confers powers upon the Appellate Court while dealing with a validly instituted appeal. However, such powers cannot be invoked to bypass or override the express statutory limitations on the right to appeal. Section 386 CrPC is reproduced hereinbelow:



“386. Powers of the Appellate Court.- After perusing such record and hearing the appellant or his pleader, if he appears, and the Public Prosecutor, if he appears, and in case of an appeal under section 377 or section 378, the accused, if he appears, the Appellate Court may, if it considers that there is no sufficient ground for interfering, dismiss the appeal, or may-

(a) in an appeal from an order of acquittal, reverse such order and direct that further inquiry be made, or that the accused be re-tried or committed for trial, as the case may be, or find him guilty and pass sentence on him according to law;

(b) in an appeal from a conviction-

(i) reverse the finding and sentence and acquit or discharge the accused, or order him to be re-tried by a Court of competent jurisdiction subordinate to such Appellate Court or committed for trial, or

(ii) alter the finding, maintaining the sentence, or

(iii) with or without altering the finding, alter the nature or the extent, or the nature and extent, of the sentence, but not so as to enhance the same;

(c) in an appeal for enhancement of sentence-

(i) reverse the finding and sentence and acquit or discharge the accused or order him to be re-tried by a Court competent to try the offence, or

(ii) alter the finding maintaining the sentence, or

(iii) with or without altering the finding, alter the nature or the extent, or, the nature and extent, of the sentence, so as to enhance or reduce the same;

(d) in an appeal from any other order, alter or reverse such order;



(e) make any amendment or any consequential or incidental order that may be just or proper:

Provided that the sentence shall not be enhanced unless the accused has had an opportunity of showing cause against such enhancement:

Provided further that the Appellate Court shall not inflict greater punishment for the offence which in its opinion the accused has committed, than might have been inflicted for that offence by the Court passing the order or sentence under appeal.”

52. The jurisdiction under Section 386 CrPC is procedural and consequential in nature and it cannot be invoked as an independent source of appellate right where none exists. To accept the submission of the Appellant/complainant would amount to expanding the scope of Section 372 CrPC beyond its legislative intent, which is impermissible.

53. In the present case, it is an admitted position that the accused has been convicted under Section 307 IPC. The appeal is neither directed against an acquittal nor against a conviction for a lesser offence. No issue has been raised regarding compensation, the only grievance concerns the alleged inadequacy of the sentence imposed.

54. Such a challenge does not fall within the scope of the proviso to Section 372 CrPC. The appropriate remedy, if any, would have been for the State to prefer an appeal under Section 377 CrPC seeking enhancement of sentence.

55. In the present matter no such appeal has been preferred by the State. In these circumstances, the present appeal, at the instance of the complainant seeking enhancement of sentence, is not maintainable.



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56. In view of the above discussion, this Court holds that the present appeal filed by the Appellant/complainant seeking enhancement of sentence is not maintainable under Section 372 CrPC.

57. Accordingly, the appeal is dismissed. Pending application(s), if any, are disposed of.

**MADHU JAIN
JUDGE**

APRIL 24, 2026/P

**PRATHIBA M. SINGH
JUDGE**