

(2010) 10 RAJ CK 0020

In the Rajasthan High Court

Case No : Criminal Miscellaneous 2nd Bail Suspension Application No. 981 of 2010

Chiranjilal

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 20-10-2010

Acts Referred:

Arms Act, 1959 — Section 25, 3
Criminal Procedure Code, 1973 (CrPC) — Section 389
Penal Code, 1860 (IPC) — Section 307

Citation : (2011) 1 RLW 883

Hon'ble Judges : Mahesh Chandra Sharma, J

Bench : Single Bench

Judgement

Mahesh Chandra Sharma, J.—The accused Appellant has filed a criminal appeal against the judgment and order dated January 20, 2009 of Addl. Sessions Judge (Fast Track) T Tonk whereby the accused Appellant was convicted for the offence u/s 307 IPC to suffer 7 years rigorous imprisonment and fine of Rs. 2,000/- and in default of fine to further suffer one month simple imprisonment. He was however acquitted of the charge u/s 3/25 of the Arms Act as the sanction for prosecution from the District Collector could not be exhibited and proved in evidence. Along with the appeal the accused Appellant has also filed an application for suspension of sentence which was dismissed as withdrawn on 29.6.2009 by this Court. Now the Appellant has filed this second application for suspension of sentence.

2. Heard learned Counsel for the accused Appellant and the learned Public Prosecutor on this second application for suspension of sentence.

3. The learned Counsel for the accused Appellant averred that the accused-Appellant was in jail in some other matter at the time of pronouncement of order by the Additional Sessions Judge and since then he is in jail. The learned Counsel without submitting serious ground only stated that so far as merits of the case

are concerned the Appellant is having a very strong case in his favour and there is every possibility of his acquittal. The learned Counsel further stated that the Appellant has been falsely implicated in the case.

4. The learned Public Prosecutor appearing on behalf of the State stated that this Court rejected the suspension application as withdrawn. The accused Appellant has been awarded sentence of 7 years RI for the offence u/s 307 for firing deshi Katta at Sunder Devi and Hemraj. Both Sunder Devi and complainant Hemraj received gun shot injuries. At this stage when his case is already listed for hearing, this second application for suspension should be rejected.

5. The Apex Court in Angana and Another Vs. State of Rajasthan, held as under:

When an appeal is preferred against conviction in the High Court, the Court has ample power and discretion to suspend the sentence, but that discretion has to be exercised judiciously depending on the facts and circumstances of each case. While considering the suspension of sentence, each case is to be considered on the basis of nature of the offence, manner in which occurrence had taken place, whether in any manner bail granted earlier had been misused. In fact, there is no straitjacket formula which can be applied in exercising the discretion. The facts and circumstances of each case will govern the exercise of judicial discretion while considering the application filed by the convict u/s 389 of the Code of Criminal Procedure.

6. It is an admitted fact that the allegation against the accused Appellant was that he fired deshi katta on account of which complainant Hemraj and his mother Sunder Devi received pellet injuries and the same have been corroborated by the medical evidence. The trial Court on the basis of the recovery of deshi katta and medical evidence of doctor and injuries suffered by the complainant and his mother, report of FSL, and the evidence of the complainant corroborated by the other prosecution witnesses, found the charge of Section 307 IPC against the accused Appellant proved beyond reasonable doubt. The accused Appellant was in judicial custody in some other matter and further he has been sentenced to imprisonment for 7 years by cogent evidence and there is no new material on record to suspend the sentence of the accused Appellant on the subsequent application for suspension of sentence. The accused Appellant is also involved in many other criminal matters. In these circumstances, the second application for suspension of sentence is rejected. The appeal of the Appellant is already listed for hearing. The counsel for the Appellant may make mention for early hearing of the appeal filed by the accused Appellant.