

(2023) 08 MP CK 0063

In the Madhya Pradesh High Court

Case No : Criminal Appeal No. 937 Of 2014

Ghanshyam (Jail Appeal)

APPELLANT

Vs

State Of Madhya Pradesh

RESPONDENT

Date of Decision : 10-08-2023

Acts Referred:

Indian Penal Code, 1860 — Section 302

Code Of Criminal Procedure, 1973 — Section 389(1)

Citation : (2023) 08 MP CK 0063

Hon'ble Judges : Rohit Arya, J;Deepak Kumar Agarwal, J

Bench : Division Bench

Advocate : Ashok Kumar Jain, A.K.Nirankari

Judgement

Deepak Kumar Agarwal, J

Heard on IA.No. 13024 of 2023, first application u/Sec. 389(1) of Cr.P.C. for suspension of sentence and grant of bail filed on behalf of appellant Ghanshyam.

Vide judgment dated 25th of July, 2014 passed by Additional Sessions Judge & Special Sessions Judge to the Court of Additional Sessions Judge, Guna in Sessions Trial No.134 of 2013, whereby the appellant has been convicted under Section 302 of IPC and sentenced to undergo LI with fine of Rs.2,000/- with default stipulation.

Prosecution case, in short, is that complainant Kailash (PW1) along with Brijesh and Harlal lodged an FIR with Police Station concerned vide Ex.P1 alleging therein that before eight - ten days, appellant accused Ghanshyam had been asking for money which was borrowed by his father (deceased) and when his father denied to give the same, because of enmity appellant accused used to abuse his father and threatened to kill him. On 21-02-2013 at around 08:00 in the morning when his father refused to give the borrowed money, the appellant-accused threatened him to kill till evening. At around 08:00 in the night, when his father deceased along his mother was sleeping nearby the courtyard, at that

time, accused appellant came and abused in filthy language. Thereafter, appellant- accused left the place and at around 09:30 in the night he reached with a farsa and when his father was sleeping nearby the courtyard, the appellant with intention of killing committed marpeet with his father. On hearing cries, when his mother and wife reached there, it was found that appellant-accused has already caused three injuries of farsa on his father at his neck due to which blood started oozing out. After commission of murder, the appellant-accused fled away from the place of occurrence. After sometime, witnesses, Banshilal, Kamal and Preetam Rajput reached spot. It is alleged that accused-appellant used to have enmity with his father over the borrowed money for this reason he killed his father deceased by inflicting farsa blows. On the above basis, Crime No.17 of 2013 was registered at PS Vijaypur. A report regarding death of the deceased was lodged vide Ex.P12. Spot map was prepared and safina form was prepared vide Ex.P3. Statements of witnesses were recorded. Blood stained and plain soil were collected. All seized articles were sent for examination to FSL. Accused appellant was arrested. After completion of investigation and other formalities, police filed charge sheet before the competent Court from where the case was committed to the Sessions Court for its trial and after conclusion of trial, the trial Court convicted and sentenced appellant for the aforesaid offence as stated above.

Learned counsel for appellant submits that there are contradictions and omissions in the evidence of complainant Kailash (PW1) and wife of deceased Kamla Bai (PW3). The appellant- accused has been falsely implicated due to previous enmity in regard to demand of borrowed money. The trial Court without appreciating the prosecution evidence, has wrongly convicted the present appellant for alleged offence. The appellant is 50 years old person and there is no criminal antecedent against him. He is in custody since the date of passing of impugned judgment and since then he has already suffered more than nine years of jail incarceration. This appeal is of the year 2014 and its final outcome will take some time. Hence, prayed for suspension of jail sentence and grant of bail.

Learned counsel for the State opposed the suspension application and prayed for its rejection.

Considering the aforesaid facts and circumstances of the case and considering the period of custody of the appellant but without commenting upon merits of the case, IA deserves to be and is hereby allowed. It is directed that jail sentence of appellant will remain under suspension subject to verification that amount of fine has been deposited, on appellant's furnishing bail bond of Rs.50,000/- (Rupees fifty thousand only) with one solvent surety of the like amount to the satisfaction of concerned trial Court for his appearance before the Principal Registrar of this Court on 13th December, 2023 and on such further dates as may be fixed by the Office in this regard till disposal of the appeal.

Certified copy as per rules.