

(2024) 03 RAJ CK 0025

In the Rajasthan High Court

Case No : Criminal Miscellaneous Suspension Of Sentence Application (Appeal)
No. 252 Of 2024

Ghishu Lal

APPELLANT

Vs

State Of Rajasthan And Others

RESPONDENT

Date of Decision : 05-03-2024

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 389

Citation : (2024) 03 RAJ CK 0025

Hon'ble Judges : Dinesh Mehta, J;Yogendra Kumar Purohit, J

Bench : Division Bench

Advocate : TRS Sodha, Magendra Singh, BR Bishnoi

Final Decision : Allowed

Judgement

1. This application for suspension of sentence under Section 389 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'Cr.P.C.') has been filed on behalf of the applicant.
2. While informing that the application of suspension of sentence of the co-accused persons Sanwar Lal and Dharmi Chand has been allowed by a Co-ordinate Bench of this Court vide order dated 02.02.2024 in D.B. Criminal Misc. Suspension of Sentence Application (Appeal) No.4/24,Mr. Sodha, learned counsel for the applicant argued that the case of present applicant is not different from those co-accused and hence, the applicant's sentence be suspended.
3. Learned counsel further submitted that while dealing with the application of suspension of sentence of the co-accused, Co- ordinate Bench of this Court was prima-facie convinced that the injuries suffered by the deceased could be due to vehicular accident.
4. Learned counsel support of his contention invited the Court's attention towards para No.7 of the order dated 02.02.2024 and submitted that Co-ordinate Bench

has expressed that multiple injuries which the deceased suffered might be on account of accident, as is reflected in the statement of PW-4 Nagendra Pal Singh (who conducted the post-mortem) and PW-16 Dr. Manoj Kumar (Medical Officer).

5. While accepting the fact that the deceased was wearing turban (safa), argued that the allegation of hitting the deceased with an axe as levelled against the present applicant does not appear to be true, inasmuch as, the nature and size of injury does not support the case set up by the prosecution- the injury inflicted by the kulhadi could not have been of such small size (2x1/2x1/4 cms) as shown in the injury report.

6. Learned Public Prosecutor opposed applicant's prayer for suspending the sentence by contending that the Co-ordinate Bench of this Court has allowed the application of suspension of sentence of the co-accused Sanwar Lal and Dharmi Chand not solely on the basis of accepting the theory of accident. He pointed out that while allowing the application of suspension of sentence of the co-accused persons, the Co-ordinate Bench of this Court has clearly noticed that the allegation of hitting the deceased with an axe is against present applicant and therefore, no indulgence be granted to the application.

7. Heard learned counsel for the applicant and learned Public Prosecutor and perused the material available on record.

8. If the probability of the injuries being caused by an accident is taken into consideration and such plea is accepted, then, applicant's case stands on similar footing with the co-accused Sanwar Lal and Dharmichand. But, if the theory of injuries being suffered on account of accident is not accepted, then, the case of the appellant has to be considered in view of the fact that the allegation of thrusting the axe on the head of the deceased is upon him.

9. For the same the post-mortem report, the nature of injury (blunt) and the size of the injury are relevant factors to be reckoned.

10. This Court feels that in normal circumstances the injury No.1 which has been suffered by the deceased and has been reported to be fatal, could not have been caused by an axe as the injury is shown to be blunt in nature. That apart, the size of the injury (2x1/2x1/4cms) that too when the deceased was wearing a turban, which was not found to be torn makes it difficult to believe.

11. In view of aforesaid and the reasoning given in the case of co-accused Sanwar Lal & Dharmichand, the application for suspension of sentence filed under Section 389 of the Code of Criminal Procedure is allowed and it is ordered that the sentence passed by the learned Additional Sessions Judge, Gulabpura, District Bhilwara vide judgment dated 02.09.2023 in Sessions Case No.07/2020 against the appellant - Ghishu Lal S/o Shri Ganga Ram Gurjar shall remain suspended till final disposal of the aforesaid appeal and he shall be released on bail, provided he executes a personal bond in the sum of Rs.50,000/- with two sureties of Rs.25,000/- each to the satisfaction of the learned trial Judge for his

appearance in this Court on 08.04.2024 and whenever ordered to do so till the disposal of the appeal on the conditions indicated below:-

(i) That he will appear before the trial Court in the month of January of every year till the appeal is decided.

(ii) That if the applicant changes the place of residence, he will give in writing his changed address to the trial Court as well as to the counsel in the High Court.

(iii) Similarly, if the sureties change their address, they will give in writing their changed address to the trial Court.

12. The learned trial Court shall keep the record of attendance of the accused-applicant in a separate file. Such file be registered as Criminal Misc. Case related to original case in which the accused-applicant was tried and convicted. A copy of this order shall also be placed in that file for ready reference. Criminal Misc. file shall not be taken into account for statistical purpose relating to pendency and disposal of cases in the trial court. In case the said accused applicant does not appear before the trial court, the learned trial Judge shall report the matter to the High Court for cancellation of bail.