
(2020) 02 RAJ CK 0024

In the Rajasthan High Court

Case No : Criminal Misc Suspension Of Sentence Application (Appeal) No. 208 Of 2020 In Criminal Appeal No. 117 Of 2019

Harish Kumar

APPELLANT

Vs

State Of Rajasthan through PP

RESPONDENT

Date of Decision : 03-02-2020

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 389

Citation : (2020) 02 RAJ CK 0024

Hon'ble Judges : Indrajit Mahanty, CJ;Dr. Pushpendra Singh Bhati, J

Bench : Division Bench

Advocate : JVS Deora, N.S. Bhati

Final Decision : Allowed

Judgement

Counsel for the appellant has pointed out that altercation happened on 15.03.2014 at 9:30 PM when the accused persons were going in a car and on the way they were stopped by the complainant and his party and demanded some amount on account of Holi festival. The sudden altercation took place in which a single injury of stone hit caused death of Harish. Counsel for the appellant has further pointed out that there were total four accused persons and a bare reading of the statement of the prosecution witnesses, particularly P.W.3, it becomes clear that the role attributed to cause death by throwing stones has been equally alleged upon all the four accused persons, out of which three have been acquitted and the present appellant has been convicted. Counsel for the appellant has further pointed out that the appellant is in custody since 20th March, 2014 and as such he is in custody for last six years.

The learned Public Prosecutor has drawn attention of this Court towards the judgment pointing out that the blood on the stones and the deceased matched with the blood found on the cloth of the appellant. Mr. Bhati has also submitted that three accused persons have been acquitted because of single death causing injury having been proved to be caused by the present appellant.

We have considered the submissions made by the rival parties and also perused the impugned judgment and the record of case.

Having regard to the facts and circumstances of the case, while refraining to make any comment on merits of the case, we consider it just and fit case to suspend the sentence as the appellant has already undergone six years of imprisonment and the cause of death is single injury by stone. This Court has also taken note of the fact that sudden altercation took place at about 9:30 PM when the complainant party was trying to extract money from the accused persons on the festival of Holi and free fight took place. Moreover the prosecution witnesses also attributed the role equally on all the four accused persons.

Therefore, Suspension of Sentence Application filed under Section 389 Cr.P.C. is allowed and it is ordered that the sentence passed by learned Addl. Sessions Judge, Kherwara, District Udaipur, vide judgment dated 27.03.2019, in Sessions Case No.88/2016, against accused-appellant, Harish Kumar S/o Shri Kalu Ram Pandore, shall remain suspended till final disposal of the appeal and he shall be released on bail subject to the condition that he executes a personal bond in a sum of Rs.50,000/- with two sureties of like amount to the satisfaction of the learned trial Judge for his appearance in this Court on 03.03.2020 and whenever ordered to do so till disposal of the appeal, on the conditions indicated below:-

1. That he will appear before the trial Court in the month of January every year till the appeal is decided.
2. 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.
3. Similarly, if the sureties change their address(s), they will give in writing their changed address to the trial Court.

The learned trial Court shall keep the record of attendance of accused-appellant in a separate file. Such file be registered as Criminal Misc. Case related to original case in which the accusedappellant 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 purposes relating to pendency and disposal of cases in the trial Court. In case the said accused-appellant does not appear before the trial Court, the learned trial Judge shall report the matter to the High Court for cancellation of bail.