

(2020) 07 MP CK 0053
In the Madhya Pradesh High Court
Case No : Criminal Appeal No. 5994 Of 2019

Jitendra Sharma

APPELLANT

Vs

State Of M.P.

RESPONDENT

Date of Decision : 31-07-2020

Acts Referred:

Scheduled Caste And Scheduled Tribes (Prevention Of Atrocities) Act, 1989 — Section 3(2), 5(a)
Indian Penal Code, 1860 — Section 147, 149, 302, 323, 459

Citation : (2020) 07 MP CK 0053

Hon'ble Judges : S. A. Dharmadhikari, J; Vishal Mishra, J

Bench : Division Bench

Advocate : Atul Gupta, Rajesh Shukla

Final Decision : Dismissed

Judgement

In pursuance of the directions issued by the Apex Court and guidelines issued by the High Court of Madhya Pradesh in the wake of COVID-19

outbreak, the matter was taken up through video conferencing while adhering to the norms of social distancing prescribed by the Government.

I.A. No. 7781/2020, an application for urgent hearing is taken up, considered and allowed for the reasons mentioned therein.

Also heard on I.A. No. 7783/2020, Second application for suspension of sentence and grant of bail filed on behalf of the sole appellant /Jitendra

Sharma. First application being I.A. No. 9166/2019 was dismissed as withdrawn vide order dated 05/02/2020.

This appeal has been preferred against the judgment dated 01/06/2019 passed by Special Sessions Judge (Attrocities), District Guna in S.T. No.

160/2017, whereby the appellant has been convicted under Section 459 of IPC and sentenced to undergo rigorous life imprisonment with fine of Rs.

1,000/-, under Section 147 of IPC sentenced to undergo rigorous imprisonment for one year with fine of Rs. 1,000/-, under Section 323/149 of IPC r/w

section 3(2) 5(a) of Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act and sentenced to undergo rigorous imprisonment for one

year on each count with fine of Rs. 1,000/- and under Section 302/149 of IPC r/w section 3(2) 5 of Scheduled Caste and Scheduled Tribes

(Prevention of Atrocities) Act and sentenced to undergo life imprisonment with fine of Rs. 5,000/-with default stipulation.

Prosecution story found to be proved in short is that all the accused persons along with ten unknown persons due to previous enmity had entered in the

house of complainant with sticks in their hands and started beating complainant's father and when his mother Smt. Rajbai and sister Savita bai tried to

intervene, even they were also beaten by the accused persons. In the incident, during treatment Neelam Singh had died.

Learned counsel for the appellant submits that appellant aged about 28 years has no concern with the incident. According to him, there are material

contradictions and omissions in the evidence of prosecution witnesses and from the evidence on record, ingredients of section 459, 147, 323/149,

302/149 of IPC and sections under the Special Act are not attracted to the facts of the case. It is further submitted that no specific role is attributed to

the present appellant. It is further submitted that appellant has already suffered the period of sentence of about Three (3) years. There are fair

chances of success of this appeal and the appeal may take long time for its conclusion and the appellant cannot be kept in custody for an unlimited

period. Under these circumstances, the execution of sentence be suspended and he be released on bail.

Per contra learned State counsel has vehemently opposed the application on the ground that case against the appellant has been proved. It is submitted

that period of custody cannot be a ground to claim latitude on this count. It is further submitted that trial court has threadbare examined the evidence

on record to arrive at the finding of guilt. Moreover, looking to the gravity and magnitude of offence coupled with his role, he does not deserve any

indulgence in view of decision of Full Bench of this Court in Dashrath Vs. State of M.P. (Cr.A. No. 1248/2005) delivered on 26/4/2017, wherein it has

been held that imprisonment of any term of a convict cannot be suspended solely on the ground of his having served sentence for any particular period

or one half of the maximum sentence, inclusive or exclusive of remission and that while considering suspension, the Court, amongst other factors, is required to consider the nature of accusation made against the accused, gravity of the offence, the manner in which the crime is alleged to have been committed and the desirability of the accused being released on bail after conviction. It is further submitted that injuries sustained by the victim are corroborated by the medical evidence and the eye-witnesses also stated against the present appellant. On these grounds, learned State counsel prays for its rejection.

Keeping in view the aforesaid facts and circumstances of the case, no new ground is made out for suspension of sentence of the appellant. The I.A.

No. 7783/2020, accordingly, stands dismissed.

E- copy of this order be sent to the trial Court concerned for compliance, if possible by the office of this Court.

Certified copy/e-copy as per rules/directions.

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