
(2020) 11 MP CK 0134

In the Madhya Pradesh High Court

Case No : Criminal Appeal No. 4495 Of 2019

Maresh Kalsarpe And Others

APPELLANT

Vs

State Of Madhya Pradesh

RESPONDENT

Date of Decision : 25-11-2020

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 374(2)

Indian Penal Code, 1860 — Section 34, 307

Arms Act, 1959 — Section 25(1B)b

Citation : (2020) 11 MP CK 0134

Hon'ble Judges : Rajendra Kumar Srivastava, J

Bench : Single Bench

Advocate : Manish Tiwari, Rupesh Patel

Judgement

Rajendra Kumar Srivastava, J

Heard on I.A. No. 2705/2020, which is second application for suspension of sentence and grant of bail to Appellant No. 1 Maresh Kalsarpe. First

application was dismissed as withdrawn vide order dated 25.09.2019.

The appeal has been preferred under Section 374(2) of the Cr.P.C., 1973 by the Appellants against judgment dated 7.5.2019 passed by Sessions Judge

Balaghat, District Balaghat (MP), in S.T. No.49/2017, by which appellant No. 1 Maresh Kalsarpe has been convicted for the offence under Section

307/34 of IPC and sentenced to undergo R.I. for 10 years and fine of Rs.15000/- and Section 25(1-B) b of Arms Act and sentenced him to undergo

RI for three years with fine of Rs. 5000/- with default stipulation respectively.

The prosecution story in brief is that on 10.12.2016 at about 21:00 PM, the information has been received from District Hospital Balaghat to the Police

Station Kotwali, therefore 'Dehati Nalisi' has been registered and it is alleged that

present appellant and other co-accused made illegal demand of money for consuming wine, while complainant refused to pay the money, then accused/ appellant abused the complainant filthily and assaulted him by means of Sword. Thereafter, case has been registered by the police for the aforesaid offence against the present appellant and other co-accused and after completion of investigation, case was committed to the Court of Session.

Learned counsel for the appellants submits that appellant-Mahesh Kalsarpe is in jail since 7.5.2019. During trial, remained in jail w.e.f. 15.12.2016 to

20.1.2017 and since 07.05.2019 to till now, so he has served almost two years of jail sentence. He has been falsely implicated in this case. There are

so many contradictions, omissions and improvements in the version of the prosecution witnesses Vishnu (PW/1) and Shailesh (PW/4). Dr. V.P.

Samad opined that injury is not dangerous to life. Dr. Suhawa Jain (PW/10) found a fracture on the left thumb of the injured Shailesh (PW/4). He is

not previously convicted. There are fair chances to succeed in the case. This appeal is of the year 2019 and it is the time of COVID-19 due to which

it will take time for its final adjudication. Therefore, the application filed on behalf of appellant No. 1- Mahesh Kalsarpe may be allowed and the period

of his remaining jail sentence may be suspended further and he may be released on bail.

Learned Panel Lawyer for the respondent/State has opposed the application.

Considering the contention of both the parties and evidence of prosecution witnesses and the fact that present appellant has served almost two years

of jail sentence, he inflicted only one injury to the injured, this appeal is of the year 2019, it is the time of COVID-19 due to which final hearing of this

appeal will take time, there are material contradictions and omissions in the evidence of witnesses, but without expressing any opinion on the merits of

the case, I am of the considered opinion that it would be appropriate to suspend the custodial sentence awarded to appellant No. 1 Mahesh Kalsarpe

and grant bail to them.

Consequently, I.A. No. 2705/2020 is allowed subject to deposit of fine amount, if not already deposited. The custodial sentence awarded to appellant

No. 1 Mahesh Kalsarpe shall remain suspended during the pendency of this appeal.

Appellant No. 1 Mahesh Kalsarpe be released from custody subject to his

furnishing a personal bond in the sum of Rs. 50,000/- (Rupees Fifty Thousand Only) with one surety in the like amount to the satisfaction of the trial Court. The appellant shall appear and mark his presence before the trial Court on 16.03.2021 and shall continue to do so on all such future dates, as may be given by the trial Court in this behalf, during pendency of the matter.

In view of the outbreak of 'Corona Virus disease (COVID-19)' the appellant shall also comply the rules and norms of social distancing. Further, in

view of the order passed by the Hon'ble Supreme Court in suo moto W.P.No.1/2020, it would be appropriate to issue the following direction to the jail authority :-

1. The Jail Authority shall ensure the medical examination of the appellant by the jail doctor before his release.

2 . The appellant shall not be released if he is suffering from 'Corona Virus disease'. For this purpose appropriate tests will be carried out.

3 . If it is found that the appellant is suffering from 'Corona Virus disease', necessary steps will be taken by the concerned authority by placing him in appropriate quarantine facility.

List the appeal for final hearing in due course.

C.C. as per rules.