

(2020) 01 CAL CK 0143
In the Calcutta High Court

Case No : CRAN No. 4001, 2142 Of 2019, Criminal Appeal (CRA) No. 4001 Of 2019

Md. Sakil @ Lal Chand @ Md. Shakil Sahi APPELLANT
Vs

State Of West Bengal RESPONDENT

Date of Decision : 24-01-2020

Acts Referred:

Indian Penal Code, 1860 — Section 148, 149, 302

Citation : (2020) 01 CAL CK 0143

Hon'ble Judges : Thottathil B. Radhakrishnan, CJ;Arijit Banerjee, J

Bench : Division Bench

Advocate : Souvik Mitter, Aammar Zaki, Faisal Ahmed, Manjit Singh, K. Yadav, Rana Mukherjee, Kakali Chatterjee, Santanu Chatterjee

Final Decision : Disposed Of

Judgement

Arijit Banerjee, J

1. The present applicants are two amongst the four accused persons in Sessions Case No.7(8) of 2009 resulting in Sessions Trial No.2(4) of 2011 in the Court of the Additional Sessions Judge, 2nd Court, Sealdah, South 24 Parganas. All the accused persons were convicted for offences found punishable under Sections 302/148 read with Section 149 IPC and sentenced to suffer rigorous imprisonment for life and also to pay fine of Rs.10,000/-, in default to suffer rigorous imprisonment for two years for the offence punishable under Section 302 IPC read with Section 149 thereof and to suffer rigorous imprisonment for three years and also to pay fine of Rs.1,000/-, in default to suffer rigorous imprisonment for six months for the offence punishable under Section 148 IPC. The present applicants i.e. Md. Sakil (accused no.3 and applicant in CRAN No.2142 of 2019) and Md. Sahenshah (accused no.1 and applicant in CRAN No.4001 of 2019) have taken out these applications for suspension of sentence and grant of bail pending disposal of the appeal which has been filed by all four convicts.

2. The prosecution case in short is that on June 2, 2009 there was an altercation between the victim, Laltu Sk. on one hand and the accused persons on the other. On that day at about 11 p.m. the alleged victim went to Dhubiatala Maidan for dinner. There, the accused persons beat up the victim with bamboo, lathi etc. causing serious injuries to the victim who was taken to the hospital where he succumbed to the injuries on the next day.

3. We have gone through the prosecution evidence on record as well as the judgment and order under appeal. The prosecution has projected P.W.4 (mother of the victim) and P.W.12 (brother of the victim) as eye witnesses. Having gone through the evidence of P.W.4 and P.W.12, it appears that there are glaring inconsistencies between their versions. To take one example, according to P.W.4 the incident took place on Dhubiatala maidan which is at a distance of three or four minutes from the house of P.W.4. However, according to P.W.12, who claimed to be a taxi-driver, when he returned to his residence after garaging his taxi he found that there was a scuffle going on between the victim and the accused persons and the accused persons assaulted the victim with iron rod, bamboo etc. However, in cross-examination, P.W.12 stated that Dhobiatala maidan is the place of occurrence. It is 200 meters from his residence. The evidence on record, prima facie, does not disclose that either P.W.4 or P.W.12 were present at the place of occurrence at the time of the incident. Hence, it raises some doubt in our mind at this stage as to whether they were eye witnesses to the incident.

4. On an overall assessment of the entire facts and circumstances of the case and the prosecution evidence on record and on an assimilation of the appreciation of the evidence by the Learned Trial Court we are of the view that this is not a case where it can be said that the applicants have no or very little chance of succeeding at the hearing of the appeal.

5. Further, there is no real likelihood of this appeal being heard in the near future. Hence, following the ratio laid down by the Hon'ble Supreme Court in *Kashmira Singh v. State of Punjab*: (1977) 4 SCC 291; *Akhtari Bi (Smt) v. State of Madhya Pradesh*: (2001) 4 SCC 355; *Surinder Singh v. State of Punjab*: (2005) 7 SCC 387; *Sunil Kumar v. Vipin Kumar & Ors.*: (2014) 8 SCC 868; *Daler Singh v. State of Punjab*; 2017 Cri L J 2337; *Husain & Anr. v. Union of India*: (2017) 5 SCC 702; *Dharampal v. State of Haryana*: 2017 Cri L J 2137 & *Batchu Rangarao & Ors. v. State of Andhra Pradesh*: 2017 (2) ALD (CrI.) 78 (AP), in our view the applicants are entitled to grant suspension of sentence pending disposal of the appeal.

6. We have also taken into consideration the fact that all the accused persons including the applicants were on bail during trial. It was submitted by Learned Counsel for the applicants that the applicants scrupulously abided by the terms and conditions of bail granted to them and did not abuse bail in any manner. This submission was not disputed by Learned State Advocate.

7. In the result, these applications succeed. The sentence of imprisonment and fine imposed on the applicants by the Learned Trial Court will stand suspended. The applicants shall be released on bail on furnishing bail bond of Rs.10,000/- each, with two sureties of like amount each, one of whom must be local, to the satisfaction of the Learned A.C.J.M., Sealdah and on further condition that the applicants shall meet the Officer-in-Charge of the concerned police station once a month between 1st and 5th starting from February, 2020 and further that they shall be personally present or shall be represented before the Court when the appeal is taken up for hearing.

8. The applications being CRAN 2142 of 2019 and CRAN 4001 of 2019 are accordingly disposed of.

9. Criminal Section is directed supply urgent Photostat certified copies of this order to the parties, if applied for, upon compliance of all necessary formalities.

10. Urgent certified photocopy of this judgment and order, if applied for, be given to the parties upon compliance of necessary formalities.