
(2025) 12 SC CK 1719

In the Supreme Court Of India

Case No : Criminal Appeal No. 5585 Of 2025 (@Special Leave Petition (Criminal) No. 8736 Of 2025)

Rajesh Upadhayay

APPELLANT

Vs

State Of Bihar & Anr

RESPONDENT

Date of Decision : 18-12-2025

Acts Referred:

Code of Criminal Procedure, 1973 — Section 389

Indian Penal Code, 1860 — Section 120(B), 147, 148, 149, 201, 302, 341, 342, 504, 506

Arms Act, 1959 — Section 27

Citation : (2025) 12 SC CK 1719

Hon'ble Judges : Manmohan, J;N.V. Anjaria, J

Advocate : Adarsh Kumar Tiwari, Vinit Pathak, Vartika Maurya, Anshul Narayan, Vineeta Singh, Ashutosh Chaturvedi, Anshuman Harsh, Prem Prakash, Samir Ali Khan, Pranjal Sharma, Manish Kumar, Arvind, Preeti Yadav, Anubhav

Final Decision : Allowed

Judgement

N.V. Anjaria, J

1. Leave granted.

2. The appellant-original complainant has questioned judgment and order dated 28.08.2024 of the Division Bench of the High Court of Judicature at Patna in Criminal Appeal (DB) No.542 of 2024, whereby the High Court suspended the sentence imposed on respondent No.2 and released him on bail during the pendency of the Appeal.

2.1 Respondent No.2-Sheo Narayan Mahto came to be convicted under Section 302 read with Section 149 of the Indian Penal Code, 1860 and sentenced to rigorous imprisonment for life with imposition of fine of ₹ 20,000/-, by learned Additional District and Sessions Judge, 19th Rohtas in Sessions Trial No.101 of 2022. The respondent No.2 was further convicted for the offence under Sections 342/149, IPC and sentenced to undergo rigorous imprisonment of one year and

to pay fine of ₹ 500/-. In respect of conviction under Sections 147 and 504/149, IPC, sentence of one year for each offence and fine of ₹ 500 and ₹ 1,000/- respectively was imposed.

2.2 Respondent No.2 came to be convicted also for the offence under Section 148, IPC, for which he was sentenced to rigorous imprisonment for a term of two years with fine of ₹ 1,000/-. Conviction was also recorded by the Sessions Court under Section 27 of the Arms Act and in respect thereof respondent No.2 was sentenced to undergo rigorous imprisonment for a term of four years and to pay a fine of ₹ 3,000/-, with default clause.

3. The appellant-informant's father named Krishna Behari Upadhyay was murdered. As per the prosecution story, on 11.12.2021 at about 4.30 p.m., the appellant along with his father Krishna Behari Upadhyay reached at Mahavir temple of the village to light 'Diya' and to do 'Arti'. At that time, the accused persons and the co-villagers Bashishthha Singh alias Munna Singh, Ajit Singh, Naga Kumar, Raghunandan Kumar and Sheo Narayan Mahto-respondent No.2 herein wielding the arms and weapons reached, at the temple. Hurling abuses, all of them surrounded the appellant and his father, telling said Krishna Behari Upadhyay that he was not performing Puja and was engaging in politics.

3.1 It is the further case of the prosecution that Pandit Krishna Behari Upadhyay tried to close the main gate of the temple, but the accused persons pushed the gate and made a forcible entry inside the temple. Ajit Singh and Raghunandan Kumar caught hold of Krishna Behari Upadhyay and Munna Singh is stated to have fired at him with a revolver. It was stated respondent No.2 also had a country-made pistol with him and that he as well as another Rajesh Mehto alias Rajesh Kumar were instigatively uttering that the Pandit should be killed as he was excessively indulging in politics. Because of gun fire shots, Krishna Behari Upadhyay fell down inside the temple premises and was in a pool of blood.

3.2 The appellant somehow managed to flee away from the place and informed his family members. Om Prakash Tiwari and Ritesh Mukhia who were the family members, as well as the other co-villagers reached at the place of the offence. They saw Munna Singh, Ajit Kumar, Naga Kumar, Raghunandan Kumar and Rajesh Kumar Mahto alias Rajesh as also respondent No.2-Sheo Narayan Mahto running away in the Eastern direction.

3.3 Upon being taken to the hospital, Krishna Behari Upadhyay was declared dead. A Fardbeyan was given by the appellant on 11.12.2021, pursuant to which the police registered the First Information Report No.96 of 2021 for the offences under Sections 147, 148, 149, 341, 342, 504, 506, 302 and 120 (B), IPC, and for the offence under Section 27 of the Arms Act against the six persons, including respondent No.2. On 02.02.2022, respondent No.2 surrendered before the Trial Court. Chargesheet No.9 of 2022 was filed on 28.03.2022.

3.4 The Sessions Court convicted and sentenced respondent No.2 for the offences as mentioned above. In the appeal proceedings before the High Court,

respondent No.2 filed an application praying for suspension of sentence, which was allowed by the High Court and during the pendency of the appeal, respondent No.2 was ordered to be released on bail, suspending the sentence imposed on him.

3.5 The High Court took the view that the role attributed to respondent No.2 in the incident was of instigation, therefore, the sentence could be suspended. Accordingly to the High Court, the First Information Report (FIR) was sent to the Magistrate's court after three days and further that the original copy of the inquest report was not produced, which, stated the High Court, were also the factors entitling respondent No.2-the convict to be released on bail during the pendency of the appeal.

4. Heard learned counsel Mr. Adarsh Kumar Tiwari for the appellant and Mr. Anshul Narayan, learned additional standing counsel for the respondent-State of Bihar.

5. There is no escape from the fact that respondent No.2 is convicted under Section 302 read with Section 149, IPC and is imposed with sentence of rigorous imprisonment for life with payment of fine. He is also convicted for the offence under the Arms Act. Respondent No.2 had undergone incarceration so far for three years. His appeal has been awaiting final outcome.

5.1. In order to assess the merits and justification or otherwise of the impugned order of the High Court whereby the High Court thought it fit to suspend the sentence imposed on respondent No.2 herein, it would be worthwhile to notice the total scenario of the events in the commission of the crime as well as relevant to consider the role and the nature of participation of respondent No.2.

5.2. The nature of role played by respondent No.2 was the aspect weighed with the High Court in suspending the sentence awarded to him, the High Court was further persuaded itself to justify the suspension of sentence of respondent No.2 on the ground inter alia that that the FIR was sent to the Magistrate's court after a gap of three days and that the original copy of the inquest report was not produced.

5.3 At the outset, it may be observed that the High Court was in evident error in resting upon the said two counts. Delay of three days in sending the copy of the FIR to the court of the Magistrate and the non-production of original copy of the inquest report could be said to be illogical considerations applied by the High Court, insofar as those aspects do not have any bearing on the credence of the prosecution's case which was otherwise established on evidence before the Trial Court. These considerations could not have guided the application of mind of the High Court.

5.4 The High Court was swayed away to observe that the role played by respondent No.2 in the incident was of instigation only. It may be true that respondent No.2 was instigator when the deceased Krishna Behari Upadhyay was

shot at, however, it is revealed from the record and the evidence, which the High Court has also accepted and observed, that respondent No.2 also had with him a country-made pistol.

5.5 As stated above, respondent No.2 had pistol with him and he along with Rajesh Kumar and other accused persons had been shouting 'kill him' (Pandit Krishna Behari Upadhyay). After the incident, the accused persons fled away. PW1, who was a Pujari present at nearby Hanuman temple deposed to state that he heard sounds of gun shot and upon hearing the sound, he came out to run towards the place and at such time, he saw Munna Singh running with weapon in his hand. Respondent No.2 was also seen running to flee from the Northern door of the temple. Thus, in the events turned out inside the temple, Munna Singh is stated to have fired the gun shots at the victim, whereas respondent No.2 with country-made pistol was inside.

5.6 While the ocular evidence on record was as above, the Medical Officer Dr. Kumar Dev Pujan (PW6) described the injuries. The nature of injuries stated by PW6 matched with the prosecution's case that the deceased was fired from the pistol on his temple. The injuries described by the Doctor were- 'Lacerated & burn & charring l"XI/2" muscle deep on left side of face, wound of entry. On dissection of skull bone, he found lacerated wound on the left mid skull, parietal region. Elongated brass metal foreign body was found lodged in brain substance of parietal region. Brain substance and meninges lacerated and blood clot in skull cavity.' The cause of the death of the deceased was mentioned by PW6 to be haemorrhage and shock due to the injuries caused as above by use of firearm.

6. Section 389 of the Code of Criminal Procedure, 1973 deals with suspension of execution of sentence pending appeal and release of appellant on bail. Conceptually, there is a distinction between bail and suspension of sentence. In *State of Haryana v. Hasmat* (2004) 6 SCC 175, this Court emphasising that the Appellate Court is expected to record proper reasons in writing for ordering suspension of execution of sentence or the order appealed, further observed that before suspension of sentence could be ordered, there has to be careful consideration of the relevant aspects. It was stated that order directing suspension of sentence and grant of bail should not be passed as matter of routine.

6.1 It is also the settled principle that the Appellate Court should not reappreciate evidence at stage of Section 389, CrPC and try to pick some lacunae or loopholes here and there in the case of prosecution. The presumption of innocence of the accused which is a principle applied in criminal jurisprudence, holds good only until the accused is tried. Once the accused is convicted at the end of the trial, the presumption of innocence does not continue.

6.2 In *Shakuntala Shukla v. State of Uttar Pradesh & Anr.* (2021) 20 SCC 818, this Court was considering the question of grant of bail during pendency of appeal at the instance of appellant who was convicted under Section, 302/149,

201 read with Section 120-B, IPC. It was observed inter alia that the High Court should be slow in granting bail to an accused convicted under Section 302/149, IPC and that once convicted, the presumption of innocence would vanish.

'The High Court has not at all appreciated and considered the fact that the learned trial court on appreciation of evidence has convicted the accused for the offences under Sections 302/149, 201 r/w 120-B IPC. Once the accused have been convicted by the learned trial court, there shall not be any presumption of innocence thereafter. Therefore, the High Court shall be very slow in granting bail to the accused pending appeal who are convicted for the serious offences punishable under Sections 302/149, 201 r/w 120-B IPC.' (Para 11)

6.3 In *Omprakash Sahni v. Jai Shankar Chaudhary & Anr.* (2023) 6 SCC 123, this Court again reiterated that the benefit of suspension of sentence can be granted only in exceptional cases more particularly so in cases involving conviction under Section 302, IPC. It was further observed that the court should consider the relevant factors like nature of accusation made against the convict, the manner of commission of crime, the gravity of the offence, etc. Distinction was brought out between grant of relief of suspension of sentence in the cases where fixed term sentence is imposed versus the cases where the convicted person is sentenced to life imprisonment, by relying

on its own decision in *Bhagwan Rama Shinde Gosai v. State of Gujarat* (1999) 4 SCC 421,

'When a convicted person is sentenced to a fixed period of sentence and when he files an appeal under any statutory right, suspension of sentence can be considered by the appellate court liberally unless there are exceptional circumstances. Of course, if there is any statutory restriction against suspension of sentence it is a different matter. Similarly, when the sentence is life imprisonment the consideration for suspension of sentence could be of a different approach.' (Para 3)

6.4 Even in respect of cases where the sentence awarded is for a fixed term, this Court in *Chhotelal Yadav v. State of Jharkhand & Anr.* Criminal Appeal No.4804 of 2025 decided on 10.11.2025 observed that 'there is a caveat that if there are exceptional circumstances, then the Court may decline to suspend the sentence even in cases where fixed term of sentence is imposed'. It was specifically observed that in respect of plea of suspension of sentence where the sentence is of life imprisonment, such relief has to be informed by a gross and apparent error in the judgment of the Trial Court.

'What could be those exceptional circumstances is not something exhaustive. It is for the Court concerned to look into those exceptional circumstances as may be pointed out by the State. However, the only consideration that should weigh with the appellate court while considering the plea for suspension of sentence of life imprisonment is that the convict should be in a position to point out something very palpable or a very gross error in the judgment of the Trial Court

on the basis of which he is able to make good his case that on this ground alone, his appeal deserves to be allowed and he be acquitted.'

(Para 16)

6.5 The dictum that the benefit of suspension of sentence, if at all to be granted in the cases involving conviction under Section 302, IPC, it has to be only in exception cases, is well settled in the catena of judgments. In *Vijay Kumar v. Narender & Ors.* (2002) 9 SCC 366 it was observed that in considering the prayer for bail in a case involving a serious offence like murder punishable under Section 302, IPC, the court should consider relevant factors like the nature of accusation made against the accused, the manner in which crime is alleged to have been committed and the seriousness of offence. The view was reiterated in *Ramji Prasad v. Rattan Kumar Jaiswal & Anr.* (2005) 5 SCC 281, *Vasant Tukaram Pawar v. State of Marashtra*, *Gomti v. Thakurdas & Ors.* (2007) 11 SCC 160.

7. Looking to the crime scenario in the instant case, the murder of father of complainant-Pundit Krishna Behari Upadhyay took place inside the temple. The appellant complainant (PW2) in terms deposed that respondent No.2 had pistol in his hand. When all the accused persons came, the father of the appellant got frightened, went inside the temple. Thereupon, as is stated, the accused persons, including respondent No.2, pushed the door of the temple and made a forced entry inside, catching hold of Pandit Krishna Behari Upadhyay. The victim fell down having received gun shot injury to be in a pool of blood. As per the evidence appreciated by the Trial court leading to conviction of respondent No.2 under Section 302 read with Section 149, IPC, the firearm was used by Munna Singh whereas respondent No.2 with pistol in his hand was instigating. Munna Singh and respondent No.2 had firearms with them. Respondent No.2 had with him a country-made pistol.

8. It is also to be noted that two of the accused persons are absconding.

9. In the light of the above highlighted principles applied to the facts of the present case and having regard to the relevant considerations such as nature of accusation, events in the crime and even the attribution of role of the appellant, it has to be held that the High Court should not have suspended the sentence, and releases respondent No.2. A clear error was committed by the High Court. The participation and role played by respondent No.2 in the entire commission of offence has to be viewed as grave and could not have been discounted for its seriousness to suspend his sentence imposed upon conviction under Section 302 read with Section 149, IPC.

9.1 It goes without saying that observations in this order are limited to the aspect of suspending the sentence of respondent No.2 and releasing him on bail, not to influence the course of merit of the trial.

10. For foregoing reasons and discussion, impugned judgment and order of the High Court dated 28.08.2024 suspending the sentence of respondent No.2 is

hereby set aside. Respondent No.2 Sheo Narayan Mahto to is directed to surrender within ten days. The police authorities shall ensure that respondent No.2 is sent behind the bars within the above time permitted for surrendering.

11. The present appeal is accordingly allowed.

In view of disposal of the Appeal, the interlocutory applications, if any, shall not survive.