
(2012) 09 GUJ CK 0077

In the Gujarat High Court

Case No : Criminal Miscellaneous Application No. 12902 of 2012 in Criminal Appeal No. 1318 of 2012

Rajeshbhai Jesingbhai Vasava

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 11-09-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 389
Penal Code, 1860 (IPC) — Section 304

Citation : (2012) 09 GUJ CK 0077

Hon'ble Judges : M. R. Shah, J

Bench : Single Bench

Advocate : Pratik B. Barot and HCLS Committee, for the Appellant; L.B. Dabhi, APP, for the Respondent

Final Decision : Dismissed

Judgement

Honourable Mr. Justice M.R. Shah

1. Rule. Mr. L.B. Dabhi, learned Additional Public Prosecutor waives service of notice of Rule on behalf of the respondent-State. In the facts and circumstances of the case and with the consent of the learned advocates appearing on behalf of the respective parties, the present application is taken up for final hearing today.

2. The present application u/s. 389 of the Code of Criminal Procedure has been preferred by the applicant herein - original accused, who is convicted for the offence punishable u/s 304 Part-II of the Indian Penal Code and sentenced to undergo 10 years R.I., to suspend the sentence and to release him on temporary bail.

3. Mr. Pratik Barot, learned advocate appearing on behalf of the applicant herein - original accused has stated that as such the applicant was suffering from mental disorder and was taking treatment. Otherwise, no father/ husband killed the wife and daughter. He has also submitted that as such this is not a fit case

for imposing maximum punishment awarded u/s. 304 Part-II of the Indian Penal Code. Therefore, it is requested to allow the present application and to suspend the sentence and to release the applicant on temporary bail.

4. The present application is opposed by Mr. L.B. Dabhi, learned Additional Public Prosecutor appearing on behalf of the respondent-State. He has taken the Court to the some of the findings given by the leaned Trial Court while convicting the applicant for the offence punishable u/s 304 Part-II of the Indian Penal Code. It is submitted that submissions made on behalf of the applicant that he was suffering from mental disability came to be considered by learned Trial Court and also considered the manner in which the applicant has committed an offence and killed wife and daughter and gave the blow by an axe on the head, while convicting the applicant and imposing the sentence.

By making above submissions, it is requested not to suspend the sentence and not to release the applicant on temporary bail.

5. Having heard learned advocates appearing on behalf of the respective parties and considering the submissions and considering the judgement and order passed by learned Trial Court for the offence punishable u/s 304 Part-II of the Indian Penal Code and sentencing him to undergo 10 years RI and the manner in which the applicant has committed an offence and has killed the innocent persons and considering the fact that the applicant is in jail from 02/01/2012 only no case is made out to suspend the sentence and to release the applicant on temporary bail. In view of the above, there is no substance in the present application and the same deserves to be dismissed and is accordingly dismissed. Rule is discharged.