

(2023) 10 RAJ CK 0025

In the Rajasthan High Court

Case No : Criminal Appeal (SB) No. 2118, 2176 Of 2023

Sumit Bishnoi @ Gabbar And Others

APPELLANT

Vs

State Of Rajasthan

RESPONDENT

Date of Decision : 06-10-2023

Acts Referred:

Indian Penal Code, 1860 — Section 24, 34, 307, 323, 341
Code Of Criminal Procedure, 1973 — Section 389

Citation : (2023) 10 RAJ CK 0025

Hon'ble Judges : Farjand Ali, J

Bench : Single Bench

Advocate : Ramesh Purohit, Kunal Bishnoi, Mahipal Bishnoi, J.K. Bhadu

Final Decision : Allowed

Judgement

Farjand Ali, J

1. The instant application for suspension of sentence has been moved on behalf of the applicants in the matter of judgment dated 21.09.2023 passed by the learned District Judge, District Shri Ganganagar in Sessions Case No.16/2014 (CIS No.457/2014) whereby they were convicted and sentenced to suffer maximum punishment of seven years' rigorous imprisonment along with fine of Rs.5,000/- under Section 307/24 of IPC and lesser punishment for the other offences under Sections 323/34 and 341 of IPC.

2. It is contended on behalf of the applicant that the learned trial Judge has not appreciated the correct, legal and factual aspects of the matter and thus, reached at an erroneous conclusion of guilt, therefore, the same is required to be appreciated again by this court being the first appellate Court. Hearing of the appeal is likely to take long time, therefore, the application for suspension of sentence may be granted.

3. Per contra, learned public prosecutor as well as learned counsel for the complainant have vehemently opposed the prayer made on behalf of the accused-

applicant for releasing the appellant on application for suspension of sentence.

4. Heard learned counsel for the parties and perused the material available on record.

5. The incident took place in the year 2011. There was no animosity of such degree which may induce or provoke the petitioner to kill the victim rather it was a simple scuffle in which the victim was clobbered by the appellants. As per the injury report, the victim sustained one injury on his occipital region. When he was examined on 11.03.2010 by the Medical Jurist, who prepared Ex.P.11, as per which three abrasions, two bruises and one lacerated wound were found on the body of the victim. All the injuries were caused by blunt object. The injury No.2 being a lacerated wound was on the occipital bone of the victim Sunil. Vide the letter (Ex.P- 12) prepared on 15.03.2010, the SHO asked the Medical Jurist to give opinion regarding the nature of the injuries. The Medical Jurist has opined that injuries Nos.1, 3, 4, 5 and 6 were simple in nature. There was no X-ray report regarding injury No.2 but at the later stage, CT Scan report got prepared and as per which there was a minor fracture on occipital bone. However, the Doctor (Medical Jurist) has abstained from opining the nature of the injury. It is subsequent thereto another opinion has been sought from Dr. S.M. Batra who was not a Medical Jurist at the hospital where the victim was treated medically. Thus, there appears reasonable ground to entertain the plea that a false case has been foisted or the nature and gravity of the offence has deliberately been shown as aggravated. In this background, hearing of appeal is likely to take further more time and considering the overall submissions while refraining from passing any comments on the niceties of the matter and the defects of the prosecution as the same may put an adverse effect on hearing of the appeal, this Court is of the opinion that it is a fit case for suspending the sentence awarded to the accused-appellants.

6. Accordingly, the application for suspension of sentence filed under Section 389 Cr.P.C. is allowed and it is ordered that the sentence passed by learned District Judge, District Shri Ganganagar in Sessions Case No.16/2014 (CIS No.457/2014) against the appellant-applicants- 1. Sumit Bishnoi @ Gabbar S/o Shri Prathviraj, 2. Sudhir S/o Shri Raseel Kumar, 3. Amar S/o Shri Vijay Singh, 4. Vikas Bishnoi @ Ugrasen S/o Leelaram, shall remain suspended till final disposal of the aforesaid appeal and they shall be released on bail provided each of them execute a personal bond in the sum of Rs.50,000/-with two sureties of Rs.25,000/- each to the satisfaction of the learned trial Judge for their appearance in this court on 06.11.2023 and whenever ordered to do so till the disposal of the appeal on the conditions indicated below:-

(1) That they will appear before the trial Court in the month of January of every year till the appeal is decided.

(2) That if the applicants change the place of residence, they will give in writing their changed addresses to the trial Court as well as to the counsel in the High

Court.

(3) Similarly, if the sureties change their addresses, they will give in writing their changed address to the trial Court.