

**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

D.B. Criminal Misc Suspension Of Sentence Application (Appeal)
No. 128/2022

In

D.B.Criminal Appeal No.26/2022

Raman

----Petitioner

Versus

State Of Rajasthan, Through PP

----Respondent

For Petitioner(s) : Mr. Shambhoo Singh

For Respondent(s) : Mr. R.R.Chhapparwal, P.P.

**HON'BLE MR. JUSTICE SANDEEP MEHTA
HON'BLE MR. JUSTICE VINOD KUMAR BHARWANI**

Order

19/04/2022

Heard learned counsel for the applicant-appellant and learned Public Prosecutor. Perused the record.

The appellant has been convicted and sentenced vide judgment dated 10.2.2022 passed by learned Sessions Judge, Dungarpur in Sessions Case No.38/2019 (CIS No.38/2019) as under:-

Under Section 323 IPC	One year imprisonment and fine of Rs.1000/-. In default of payment of fine one month additional imprisonment.
Under Section 302 IPC	Life Imprisonment and fine of Rs. 10,000/-. In default of payment of fine further undergo six month's additional rigorous imprisonment

The instant application under Section 389 Cr.P.C. has been filed on behalf of the appellant seeking suspension of sentence awarded by the trial court.

Shri Shambhoo Singh, learned counsel representing the appellant vehemently and fervently contended that the entire prosecution case is false. The eye witnesses who have given evidence against the appellant are all related to the deceased and their evidence is partisan in nature. The prosecution did not lead any substantive evidence to corroborate the theory of motive for the incident as attributed to the appellant in the FIR Ex.P-1. The recovery of the Sword shown from the appellant is totally fabricated because the appellant was arrested on 09.03.2019 whereas, on a perusal of the Malkhana Register Ex.P-24, it becomes clear that the Sword had already been recovered and deposited in the Malkhana of police station on 08.03.2019. He further submitted that a suggestion was given by the defence to few of the eye witnesses that as a matter of fact the witness Shailesh (PW-8) and the witness Kalu (PW-1) being son and husband respectively of the deceased Sharda were fighting with each other and when Sharda intervened, she received the injury on the neck. Shri Rathore thus, urges that the appellant has strong case for assailing the impugned judgment and hence he deserves indulgence of bail during pendency of the appeal.

Learned Public Prosecutor has filed reply to the application for suspension of sentence. He vehemently and fervently opposed the submissions advanced by Shri Rathore and contended that the eye-witnesses Kalu (PW-1), Ms. Meena (PW-2), Nilesh (PW-11), Smt. Shanoo (PW-10) and Shailesh (PW-8) have given clinching evidence on the aspect that the appellant herein inflicted the

Sword blow on the neck of the deceased Smt. Sharda. He drew the Court's attention to the post-mortem report (Ex.P-19) and the Photographs (Ex.P-27) and pointed out that there is a clear evidence of the wound on the neck which is apparently caused by a sharp weapon. He urges that the witnesses Smt. Shanoo (PW-10) and the child witness Nilesh (PW-11) categorically alleged that the appellant herein inflicted the blow of the Sword on the neck of Smt. Sharda. The defence did not put a single question to these witnesses on this aspect of their testimony, which remained uncontroverted. Thus, learned Public Prosecutor implored the Court to reject the application for suspension of sentence.

We have given our thoughtful consideration to the submissions advanced by the learned counsel for the parties. We may state that it is a well settled principle of criminal jurisprudence that in a case of murder, where ocular testimony is convincing, there is no requirement for the prosecution to seek corroboration in the form of motive and recovery. Thus, even if the argument advanced by Shri Rathore regarding lack of evidence of motive and the doubtful nature of the recovery is to be accepted, the fact remains that the eye witnesses referred to supra have given categoric testimony that the appellant herein inflicted the Sword blow on the neck of the deceased Sharda which proved fatal. The allegations of the eye witnesses are duly corroborated by the medical testimony. Since the incident took place in the house of the complainant, there was no possibility of any independent witness having seen the same. The presence of the eye witnesses in the house cannot be doubted.

Looking to the nature and gravity of allegations, we are of the firm view that the appellant does not deserve indulgence of bail.

The application for suspension of sentence is, therefore, dismissed as being devoid of merit.

(VINOD KUMAR BHARWANI),J

(SANDEEP MEHTA),J

29-RP/-

RAJASTHAN HIGH COURT



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