
(2023) 02 MP CK 0088

Madhya Pradesh High Court (Gwalior Bench)

Case No: Criminal Appeal No. 1421 Of 2019

Manmohan And Others

APPELLANT

Vs

State Of Madhya
Pradesh

RESPONDENT

Date of Decision: Feb. 24, 2023

Acts Referred:

- Code Of Criminal Procedure, 1973 - Section 389(1)
- Indian Penal Code, 1860 - Section 148, 149, 302, 307

Citation: (2023) 02 MP CK 0088

Hon'ble Judges: Rohit Arya, J; Satyendra Kumar Singh, J

Bench: Division Bench

Advocate: Sushil Goswami, Rajesh Shukla

Final Decision: Allowed/Disposed Of

Judgement

Heard on IA. No.799 of 2023, which is third repeat application under Section 389 (1) of Cr.P.C. seeking suspension of sentence and grant of bail

moved on behalf of appellant No.1-Manmohan and appellant No.4- Ajab Singh.

Appellants No.1-Manmohan and No.4-Ajab Singh along with other accused persons stood convicted under Section 148 of IPC and sentenced to

undergo two years RI with fine of Rs.500/- each; under Section 302/149 of IPC and sentenced to life imprisonment with fine of Rs.5000/- each; and

under Section 307/149 of IPC and sentenced to ten years RI with fine of Rs.1000/-each, with default stipulations vide judgment of conviction and

order of sentence dated 22.01.2019 passed by the IV Additional Sessions Judge, Guna (M.P.) in Sessions Trial No.289/2015.

As per prosecution story, in the background of rivalry between complainant party and accused persons it is alleged that a fight took place between

complainant Gyan Singh and Raja on 14.07.2015 at about 10 pm. While complainant Gyan Singh with his brothers Raghuvir and Sonu were standing at

the market at 12-30 in night, Phool Singh, Banti, Ajab Lodha (appellant No.4), Monu Meena, Jeetu Bana, Mahendra Bana, Arvind Bana and

Manmohan (appellant No.1) came with common intention to cause grievous hurt to the complainant and his brothers. On exhortation of Phool Singh,

all the three namely Phool Singh, Banti and Monu armed with katta fired gun shot injuries causing serious wounds on the chest and body of deceased

Raghuvir. Blood started oozing out. Thereafter, Banti had also thrown big stone on the face of the deceased Raghuvir. Eventually, Raghuvir died

homicidal death owing to the aforesaid injuries including gun shot injuries. On an FIR so lodged investigation started. Upon evaluation of incriminating

material, challan was filed and case was committed to the Sessions Court for trial. The Sessions Court, upon critical evaluation of the evidence

available on record has convicted and sentenced the appellants along with other co-accused persons, as referred above.

Shri Sushil Goswami, learned counsel for appellants No.1-Manmohan and No.4-Ajab Singh inter alia submits that the impugned judgment suffers from

patent perversity of approach as relevant evidence has been ignored and the judgment is based on surmises and conjectures. Learned counsel while

referring to the depositions of eye-witnesses / injured witnesses, namely, Gyan Singh (PW-2) and Sonu (PW-4), submits that there is no act much less

overt act attributed either to Manmohan or Ajab Singh unlike Phool Singh, Banti, Monu and Arvind, who are alleged to be armed with Katta and farsi

and fired gunshot injuries on the body of deceased Raghuvir, which led to his homicidal death. Appellants have already suffered jail incarceration of

more than four years and five months. The appeal is of the year 2019 and there is no likelihood of early hearing of this appeal in the near future.

Hence, learned counsel for the appellants prays for suspension of sentence and grant of bail.

Per contra, Shri Rajesh Shukla, learned Deputy Advocate General, while supporting the judgment impugned, submits that the appellants have been

convicted with the aid of Section 149 of IPC. Injured witnesses have clearly deposed about their presence on spot along with main accused persons.

Besides, it has also come in their evidence that the appellants armed with lathi had inflicted injuries not only to the deceased but also to injured Sonu.

Therefore, no exception can be taken in the matter on suspension of sentence and grant of bail.

Upon hearing learned counsel for the parties, though this Court refrains from commenting on rival contentions touching merits of the case, but regard

being had to the obtaining facts and circumstances and that the appellants No.1 and 4 have already undergone four years and five months jail sentence

as on date, in our opinion, they are entitled to be extend the benefit of suspension of sentence and grant of bail.

Accordingly, it is directed that the jail sentence of appellant No.1-Manmohan and appellant No.4-Ajab Singh shall remain suspended during pendency

of present appeal and they shall be released on bail on their furnishing a personal bond in the sum of Rs.2,00,000/- (Rupees Two Lacs only) each with

one solvent surety each in the like amount to the satisfaction of the Trial Court. Both the appellants are directed to appear before the Registry of this

Court first on 11th April, 2023 and on other subsequent dates as may be fixed in this behalf with following further conditions:-

(i) Appellants will abide by the terms and conditions of various circulars and orders issued by the Government of India and the State Government as

well as the local administration from to time in the matter of maintaining social distancing, physical distancing, hygiene, etc., to avoid proliferation of

Novel Corona virus (COVID-19);

(ii) The concerned Jail Authorities are directed that before releasing the appellants, their medical examination be conducted through the jail doctor and

if it is prima facie found that they are having any symptom of COVID-19 then the consequential follow up action including the isolation/quarantine or

any further test required be undertaken immediately;

(iii) On violation of the conditions, State is free to apply for cancellation of bail.

Accordingly, the I.A. No. 799/2023 stands allowed and disposed of.

Observations on facts, if any, are only for the purpose of disposal of the instant application for suspension of sentence and shall have no bearing on the

merits of the appeal.

Certified copy as per rules.