

Charan Singh @APPELLANT@Hash State of Rajasthan & Ors

Court: Rajasthan High Court (Jaipur Bench)

Date of Decision: Sept. 6, 2018

Acts Referred: Indian Penal Code, 1860 " Section 34, 201, 302, 406, 498A
Code of Criminal Procedure, 1973 " Section 70(2), 319
Indian Evidence Act, 1872 " Section 106

Hon'ble Judges: Munishwar Nath Bhandari, J; Dinesh Chandra Somani, J

Bench: Division Bench

Advocate: Biri Singh, Rajesh Choudhary, Rakesh Kumar, Aladeen Khan, Amit Jindal

Final Decision: Dismissed

Judgement

Heard on the applications for suspension of sentence.

The applicants have been convicted and sentenced for the offences under Sections 498-A, 302/34, 406 & 201 IPC.

It is a case where deceased was strangled as per the postmortem report and accordingly, her cause of death is asphyxia. The postmortem report

shows three injuries on the neck out of which two are bruises and one fracture on the right little finger. It is said to have caused due to struggle.

Learned counsel for the applicants submit that both the accused were not available at the time of incident thus they have been falsely implicated. In

fact, deceased was found hanging. She has thus committed suicide out of frustration for not getting the job in Rajasthan Administrative Services. She

was otherwise having very cordial relations with the applicants, as is coming out from the letter written by her in July, 2013. In view of the above and

as there is no connecting evidence, the sentence of both the accused may be suspended, as otherwise applicant-Shakuntala was on bail during trial.

Learned Public Prosecutor, assisted by learned counsel for the complainant, have opposed the application for suspension of sentence and submit that

the case was registered against the husband, father-in-law and mother-in-law but father-in-law was not charge-sheeted as he was having a job at

Delhi and residing there thus, said to be not available at the time of incident. A case against applicant-Shakuntala was found but, despite that,

chargesheet was not filed by the police to favour her. The complainant had to make an application under Section 319 Cr.P.C. and, on the aforesaid,

the case was taken against accused-Shakuntala. She, at that stage, misled the Court to obtain the bail after rejection of the application under Section

70 (2) Cr.P.C. Referring the bail order, it is stated that the Court was misled by stating that police found her to be innocent, whereas, referring the

conclusion of investigation, it is stated that a case was found against both the accused. The applicant-Shakuntala has thus taken bail by misleading the

Court hence application for suspension of sentence may not be accepted.

Referring to the facts of this case, it is stated that both the accused have committed offence under Section 302 IPC. They had caused death of the

deceased by putting pressure on the neck to strangle her. The aforesaid is proved from the postmortem report. On the neck itself, three injuries

were found which do not come in the case of hanging. In the opinion of doctors also, it is a case of strangulation. The fracture in right little finger

shows struggle by the deceased. In view of the above and looking to other evidence, the application for suspension of sentence may not be accepted.

It is even after taking into consideration Section 106 of Evidence Act. The allegation exists against both the accused for causing offence and

prosecution has proved it beyond doubt.

We have considered rival submissions and noted the facts given by both the parties. Any comment on the arguments of either of the parties may

affect or cause prejudice to the final hearing of the appeal. However, to examine a prima facie case, we have gone through the record of the case and

find prima facie material against the accused. We also find that the bail order of applicant-Shakuntala refers a misstatement of fact declaring her to be

innocent by the police, whereas, a case was found against her, despite that, charge-sheet was not filed by the police. It is due to misstatement that

applicant-Shakuntala could get the bail.

Taking into consideration the overall facts and circumstances of the case, we are not inclined to accept the applications for suspension of sentence of

the applicants.

Accordingly, the applications for suspension of sentence are dismissed.

Learned counsel for the applicants are directed to prepare and file the paper book at the earliest, and immediately after filing the paper book, the

appeal be listed for final hearing.

A copy of this order be placed in the connected file.