

SUPREME COURT OF INDIA

Ramji Prasad

Vs.

Rattan Kumar Jaiswal

Crl.A.No.386 of 2000

(K. T. Thomas and Mrs. Ruma Pal, JJ.)

18.04.2000

ORDER

1. Leave granted.

2. Appellant is the brother of one Madan Lal who was murdered on a day when his father Kanahya Lal was also murdered. First respondent was one of the accused chargesheeted by the investigating agency for the aforesaid murder. We are told that one of the six assailants is still absconding and hence the trial proceeded against the remaining five accused. Four were acquitted and first respondent was found guilty of the offence under Sec. 302 of the Indian Penal Code. It is found that he used a gun to shoot the deceased. The trial Court convicted him as per the judgment dated 15-7-1999. He filed an appeal before the Allahabad High Court and at the first instance itself he was granted bail as per order dated 14-9-99 passed by a learned single Judge of the High Court. Appellant being aggrieved by the aforesaid order has filed this appeal by special leave.

3. Absolutely no reason is shown by the learned single Judge for adopting this exceptional course in a case where an accused was found guilty by the trial Court under Sec. 302 of the Indian Penal

Code. The normal practice in such cases is not to suspend the sentence and it is only in exceptional cases that the benefit of suspension of sentence can be granted.

4. We, therefore, set aside the impugned order. Mr. K. B. Sinha, learned senior counsel arguing for the accused submitted that this case can fall within the exception for suspending the sentence. Mr. P. K. Jain, learned counsel appearing for the appellant, on the other hand, narrated a number of broad features to support his contention that under no circumstance suspension of sentence can be granted in favour of this appellant. We refrain from considering the merits of the rival contentions, for, it is open to the first respondent to move the High Court and satisfy the High Court that his case would fall within the exception wherein there is justification for suspending the sentence.

5. With these observations the appeal is disposed of.

Order accordingly.