

**Amit Kapoor Vs. State**

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**Court :** Delhi

**Decided On :** Apr-24-2002

**Reported in :** 2002IVAD(Delhi)939; 98(2002)DLT232; 2002(63)DRJ479

**Judge :** B.A. Khan and; V.S. Aggarwal, JJ.

**Acts :** [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 389; [Indian Penal Code \(IPC\), 1860](#) - Sections 34, 302, 397 and 436

**Appeal No. :** Crl. M. 634/2002 in Crl. A. 537/2000

**Appellant :** Amit Kapoor

**Respondent :** State

**Advocate for Def. :** Ravinder Chadha, Adv.

**Advocate for Pet/Ap. :** Franseesa Kapoor and; Vivek Singh, Adv

**Disposition :** Crl. M. 634/2002 dismissed

**Judgement :**

**V.S. Aggarwal, J.**

1. Appellant/petitioner seeks suspension of sentence invoking Section 389 of the Code of Criminal Procedure. The learned Additional Sessions Judge held him guilty of the offence punishable under Section 302/34 Indian Penal Code. They

were sentenced to undergo imprisonment for life and a fine of Rs. 5000/- for the offence punishable under Section 302. In default of payment of fine they were to undergo further imprisonment for six months. They were to sentenced to undergo rigorous imprisonment for 7 years and to pay a fine of Rs. 5000/- for the offence punishable under Section 397 Indian Penal Code. In default of payment of fine they were to undergo further rigorous imprisonment for six months. They were further sentenced to undergo rigorous imprisonment for seven years for the offence punishable under Section 436 Indian Penal Code and to pay a fine of Rs. 5000/- and in default of payment of fine they were to undergo rigorous imprisonment for six months.

2. The facts of the prosecution case in brief are that on 4.8.98 house No. J-13/58 Rajouri Garden had been set on fire. Subhash Gakhar used to live in the said house with his wife and daughter. the dead bodies of the daughter of Subhash Gakhar and his wife were recovered. There were various injuries on the person of the deceased. The prosecution case was that the appellant in conspiracy with others had committed robbery, murdered the two persons referred to above and had set the premises on fire.

3. The learned trial court believed the prosecution evidence and had concluded that in the facts of the case taking totality of the facts appellants must be held guilty of the above said offenses.

4. Learned counsel for the appellant urged that simply on basis of the alleged recovery on the person of the appellant it cannot be held that prosecution has successfully proved its case and thereforee the appellant should be admitted to bail. The learned counsel referred to an order of this court in Criminal Misc. 541/2001 in CrI. A. 167/2001 (Id-Mohd. v. State) to contend that in similar circumstances therein the sentence of the person concerned had been suspended.

5. On appraisal of the facts and considering the totality of circumstances we are of the considered opinion that this is not a fit case to suspend the sentence. Reasons are all fair to fetch. The earlier application filed by the petitioner/appellant had been considered and this court had dismissed the same on 6th November, 2001.

No new circumstance had been brought to our notice to prompt us to re-consider and go into the said controversy all over again. Not only that the trial court has found that the appellant had acted in conspiracy with the co-accused and it is followed by the recovery of the alleged weapon. On top of it also is the gravity of the offence and the manner in which it is purported to have been committed.

6. Cumulative effect of all these circumstances and the facts would be that it would not be appropriate to suspend the sentence and accordingly Crl. M. 634/2002 in Crl. A. 537/2000 fails and is dismissed. BY way of abundant caution it is added that nothing said herein should be taken as any expression of opinion on merits of the case.

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