

**Raj Kumar @ Raju Vs. State**

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**Court :** Delhi

**Decided On :** Oct-28-2010

**Judge :** Mr. Anil kumar, ; Mr. S.L. Bhayana, J J.

**Acts :** Code Of Criminal Procedure (CRPC) - Sections 389(1), 5

**Appeal No. :** Crl.MB No. 1214/2010 ; Crl.A. No. 1025/2010

**Appellant :** Raj Kumar @ Raju

**Respondent :** State

**Advocate for Def. :** Mr.Jaideep Malik, Adv.

**Advocate for Pet/Ap. :** Mr.Rahul Tandon ; Mr.P.K.Dham ; Mr.Tarun Arora , Adv.

**Judgement :**

1. Whether reporters of Local papers may be allowed to see the judgment?
2. To be referred to the reporter or not?
3. Whether the judgment should be reported in the Digest?

## **ORDER**

This is an application by the applicant under Section- 389(1) of CrI. Procedure Code for suspending his sentence during the pendency of the appeal and to release him on bail. The applicant has contended that he is in custody since 16th

November, 2004 and he has every chance of succeeding in appeal. The applicant is stated to be a permanent resident of Delhi and has roots in the society and there is no chance of his fleeing from justice. The learned counsel for the applicant has very emphatically contended that the applicant has been convicted merely on the basis of the testimony of his six years old son. According to him, the testimony of his son regarding the applicant strangulating his wife, mother of the witness is not reliable as he had also admitted in the cross-examination that the applicant had not strangulated his wife. The other factor to cast a doubt on the testimonies of PW-7 Master Anubhav is that he remained with his in-laws for a considerable period after the alleged incident on 14/15th November, 2004 and his statement was recorded by the police on 1st February, 2005. Referring to the cross-examination of PW-2 Inspector Shyam Pant, it is pointed out that no reason has been given for not recording the statement for such a long period after the incident in the case diary nor any cogent reason has been disclosed by the said witness in his deposition recorded on 30th November, 2009. The relevant portion of statement of PW-7 Master Anubhav is as under :-

" . I saw that my uncle (chacha) had caught hold of legs of my mother and my father was strangulating her. Thereafter, I went to sleep. I was woken up by my maternal uncle. Accused Prem Kumar present in the Court is my uncle (chacha) and the other accused is my father."

In the cross-examination, the child witness had admitted that he had been living with his maternal grandmother for three to four years. In his statement to the police Ex. PW-7/DA-3 he had not told about holding of legs of his mother by his uncle and strangulation by the father rather he first stated that his uncle was present at the time of the incident and also admitted that at the time of death of his mother his uncle was away to Abohar (Punjab). The Trial Court had acquitted Sh. Prem Kumar, co-accused (chacha) of the accused. The child witness also categorically stated in his cross- examination that he had not seen his father strangulating his mother. His relevant cross-examination is as under:- " I had not seen my father strangulating my mother (objected to)."

The learned additional public prosecutor is unable to explain as to how in the cross-examination, if the witness had admitted that he had not seen, the same could be objected to and on what ground. From the testimony of the witness, it is apparent that the child witness has given diametrically opposite depositions of the involvement of his father in the strangulation of his mother. The learned counsel for the petitioner has also referred to the opinion of the doctor about the strangulation of the deceased with the nylon rope Ex. P1, recovered who was not examined and which was exhibited as PW-2/22C in the statement of the police inspector. According to the learned counsel, Ex. PW-22/C could not be proved by Inspector Pant as the concerned doctor who had made the endorsement on the post mortem report which is Ex. PW-21/A has not been examined and PW-22 has not deposed that the opinion endorsed on the post mortem report was made in his presence or that he is conversant with the signatures of the person, who had made the endorsement, except stating that it bears the signatures of Dr. Anil at Point-A. Though, he denied the suggestion that he had obtained a false report in Ex. PW-22/C, however, there is no deposition as to how he could identify the signatures of Dr. Anil and was conversant with the same or why Dr. Anil who had given the report or any of his colleague could not be examined.

Perusal of the Nominal Roll of the applicant reveals that he has already undergone sentence of 5 years 10 months and 29 days as on 15th October, 2010 and has also earned remission of 1 month 25 days and his conduct in the jail is satisfactory. There are no allegations of any apprehension of misuse of his liberty if granted to him. In the totality of facts and circumstances and for the foregoing reasons it is apparent that there are sufficient reasons to suspend the sentence of the appellant/applicant considering the offence and other circumstances, which have been considered herein above. For the foregoing reasons, the sentence of the appellant is suspended during the pendency of the present appeal and he be released on bail on furnishing a personal bond in the sum of Rs.10,000/- with two sureties of the like amount to the satisfaction of the trial court.

During the period of suspension, the appellant shall keep the prosecution informed about any change of his address. The application is allowed in terms hereof.

A copy of this order be sent to the Jail Superintendent for compliance. Dasti.

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