RAJASTHAN HIGH COURT
सत्यमेव जयते

HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR

D.B. Criminal Misc. Suspension Of Sentence Application (Appeal) No. 1541/2026

IN

D.B. Criminal Appeal (Db) No. 79/2026
CNR: RJHC010905232026 | URN: SOSA / 3510U / 2026

Rajasthan High Court
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1. Mukesh S/o Shri Ram Chandra, Aged About 24 Years, Resident Of Ward No. 7, New Vinod Nagar, Mill Gate, Hissar Police Station Htm Hissar District Hissar. (At Present Lodged In Sub Jail, Bhadra.)
2. Rajkumar @ Raju S/o Shri Roop Lal, Aged About 27 Years, Chandiyani Kallan Tehsil Balachor Distt. Nava Shahar, At Present Ward No. 7, New Vinod Nagar, Mill Gate, Hissar Police Station Htm Hissar District Hissar. (At Present Lodged In Sub Jail, Bhadra.)

----Petitioners

Versus

State Of Rajasthan, Through Pp

----Respondent

Connected With

D.B. Criminal Appeal (Db) No. 79/2026
CNR: RJHC010275142026 | URN: CRLAD / 214U / 2026

1. Mukesh S/o Shri Ram Chandra, Aged About 24 Years, Resident Of Ward No. 7, New Vinod Nagar, Mill Gate, Hissar Police Station Htm Hissar District Hissar. (At Present Lodged In Sub Jail, Bhadra.)
2. Rajkumar @ Raju S/o Shri Roop Lal, Aged About 27 Years, Resident Of Chandiyani Kallan Tehsil Balachor District Nava Shahar, At Present Ward No. 7, New Vinod Nagar, Mill Gate, Hissar Police Station Htm Hissar District Hissar. (At Present Lodged In Sub Jail, Bhadra.)
3. Sandeep Kumar @ Ronaldo S/o Shri Husan Lal, Aged About 25 Years, Resident Of Chandpur Rurki, District Navashahar, Punjab, At Present Ward No. 7, New Vinod Nagar, Mill Gate, Hissar Police Station Htm Hissar District Hissar. (At Present Lodged In Sub Jail, Bhadra.)

----Petitioners

Versus

State Of Rajasthan, Through Pp

----Respondent

For Petitioner(s)	:	Mr. Rakesh Matoria. Mr. Anirudh Choudhary.
For Respondent(s)	:	Mr. C.S. Ojha, P.P.

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HON'BLE MR. JUSTICE MUNNURI LAXMAN
HON'BLE MR. JUSTICE ASHUTOSH KUMAR

Judgment

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04/11/2026

1. The matter comes up for consideration of the application for suspension of sentence filed by the appellants No. 1 and 2. However, at the request of learned counsel for the parties, the Criminal Appeal itself is finally heard.

2. The present Criminal Appeal has been filed by the appellants-accused against the judgment and conviction dated 26.02.2026 passed by learned Additional Sessions Judge, Bhadra, District Hanumangarh in Sessions Case No. 17/2019 arising out of FIR No. 223/2018 registered at Police Station-Bhirani, District-Hanumangarh, wherein and whereby the appellants were convicted for the offences under Sections 341, 302/34, 324/34 of IPC and Section 4/25 of Arms Act and sentenced to undergo the terms as under:-

Appellant Nos. 1 to 3 -

341 IPC -	1 month S.I. and fine of Rs.500/-. In default of payment of fine further to undergo 5 days S.I.
302/34 IPC -	Life Imprisonment and Fine of Rs.5000/-. In default of payment of fine further to undergo 2 years S.I.

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324/34 IPC - 2 years S.I. and fine of Rs.1000/-. In default of payment of fine further to undergo 3 months S.I.

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Appellant No.3 -

4/25 Arms Act - 1 year S.I. and fine of Rs.1000/-. In default of payment of fine further to undergo 1 month S.I.

3. The sum and substance of the case of the prosecution is that on 19.09.2018 at about 03:30 AM at Suratpura Hotel, Suratpura, a quarrel took place between Krishna Kumar and Kabirdas (PW-5) with the present appellants. The appellant No.3-Sandeep Kumar inflicted the stab injury to the deceased Krishna Kumar and also caused injury to PW-5 - Kabirdas at that time PW-6 - Ravi was also present. The appellants were stranger to the deceased and the injured. After giving stab injury, the appellants fled away from the place of offence. The incident was informed to PW-1 - brother of the deceased by the PW-6 - Ravi and the PW-1 lodged an FIR (Exhibit-P/12). On the basis of the said FIR, the investigation was taken-up. The appellants were arrested on interrogation. During the investigation, Test Identification Parade of the appellants was conducted in the presence of the PW-5 and PW-6 to identify the unknown offenders, who have committed the offence. In the TI Parade, the injured PW-5-Kabirdas and PW-6-Ravi identified the present appellants, were the persons, who allegedly committed the offence.

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4. The police have recovered the cellphones of the appellant Nos. 1 and 2 under Recovery Memo (Exhibits-P/49 and P/50) and the appellant No.3-Sandeep Kumar has made a disclosure under Exhibit-P/45 to the concealment of knife, which allegedly used in the commission of offence and basing on the said confession, the knife was recovered and simultaneously, on the basis disclosure of statement of the appellant No.3-Sandeep Kumar (Exhibit-P/47), the Knife and the cellphone were recovered under Exhibit-P/24 and 26. The FSL report discloses no blood was detected on the Knife. The cause of death was shown to be on account of inflicting two stab injuries to the deceased. After concluding the investigation, the Police filed the charge-sheet.

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5. The Trial Court has framed charges against the appellants under Section 341, 302/34, 307/34 and 324/34 of IPC and Section 4/25 of Arms Act.

6. In support of their case, prosecution has examined Exhibits - PW-1 to PW-35 and relied upon the documents Exhibits - P/1 to P/104 and Articles 1 to 14. No defence evidence was produced.

7. The exhibited material were denied by the appellants.

8. The Trial Court after appreciating the evidence on record, by its judgment and conviction date 26.02.2026, convicted the present appellants for the charges under Sections 341, 302/34, 324/34 of IPC and 4/25 Arms Act and sentenced to undergo the terms as under:-

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Appellant Nos. 1 to 3 -

341 IPC - 1 month S.I. and fine of Rs.500/-. In default of payment of fine further to undergo 5 days S.I.

302/34 IPC - Life Imprisonment and Fine of Rs.5000/-. In default of payment of fine further to undergo 2 years S.I.

324/34 IPC - 2 years S.I. and fine of Rs.1000/-. In default of payment of fine further to undergo 3 months S.I.

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Appellant No.3 -

4/25 Arms Act - 1 year S.I. and fine of Rs.1000/-. In default of payment of fine further to undergo 1 month S.I.

9. Aggrieved by the aforesaid conviction and sentence, the present appeal is filed.

10. Learned counsel appearing for the appellants submits that the case set up by the prosecution was based on the direct eye-witness. The PW-5 - Kabirdas is the injured eye-witness and PW-6 Ravi is the another eye-witness. Apart from the above direct eye-witness, the prosecution also relied upon the recovery of knife and cellphone at the appellant No.3 Sandeep Kumar and also recovery of cellphones of appellant Nos. 1 and 2, which according to the prosecution, disclosed all the three cellphones' towers were located and at the relevant time of offence and scene of offence fall within the said cellphone towers.

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11. According to the learned counsel for the petitioner, both the eye-witnesses were turned hostile and there is no incriminating evidence found to show use of such knife in the commission of offence. The only evidence with the Trial Court to base the conviction was the location of the cellphones, which were recovered from the appellants and scene of offence was falling within the tower of their use at the time of offence.

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12. According to the learned counsel for the petitioner, the evidence of Investigating Officer and the Nodal Officer clearly demonstrate that there is no definite findings that the cellphones' location was traced at the seen of the offence. At the most, they could able to prove that the use of cellphones on the date and particular time was proved to be local cellphone tower and not at the seen of offence. It is also submitted that as per the PW-24 IO evidence, the Sim Cards were not standing in the name of appellants and the cellphones were also not proved to be belonged to the appellants. Basing on the recovery, the cellphones tried to be attributed to the present appellants. Therefore, it is also his submission that the place of offence is a public place even the cellphones' location was found to be at the said place, it cannot be said that the presence of those petitioner made the inference that they have committed the offence. Therefore, the conviction is not sustainable and the judgment and conviction date 26.02.2026 passed by learned Additional Session Judge, Bhadra, District Hanumangarh in

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Sessions Case No. 17/2019 deserves to be quashed and set aside.

13. Learned Public Prosecutor appearing for the State submits that evidence of Nodal Officer as well as the incriminating evidence produced by the prosecution particularly cellphones, though Sim Cards were not said to be proved to that of the appellants, however, recovery of cellphones were made from the possession of the appellants. As such, they have to explain the circumstances under which the cellphones were in their possession. Such evidence is lacking in the present case. It is also his submission that though the eye-witnesses have not supported the case of prosecution but the location of the cellphones clearly demonstrate the presence of the appellants at the seen of the offence, which clearly proves last seen theory. Therefore, according to him, the conviction is sustainable and the present appeal is liable to be rejected.

14. We have appreciated the evidence and contentions of both the parties.

15. Admittedly, the PW-5 and PW-6 were the star witnesses to the prosecution. Particularly, PW-5-injured witness is the best witness to prove the prosecution case. The presence of PW-6 is also proved, however, those two witnesses have not supported the role of the present appellants. The appellants are strangers to the deceased. There is a previous Test Identification Parade, in which PW-5 and PW-6 identified the appellants were the persons, who inflicted the injuries to

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deceased and PW-5, however, such evidence is not a substantive evidence. In the Court, they have not supported the identification as well as the involvement of the appellants. Therefore, the prosecution has failed to prove its case on the basis of direct evidence that the appellants have committed the offence.

16. The Trial Court have convicted the appellants based on the circumstance or recovery of cellphones and location of cellphones at the time and place on the date of offence.

17. We have also appreciated the evidence relating to the cellphones. The Articles 3 and 4 are the cellphones recovered from appellants No.1 and 2 Mukesh and Rajkumar @ Raju respectively under Exhibit-P/49 and P/50. The cellphone recovered from the appellant No.3 Sandeep Kumar was based on the disclosure statement under Exhibit-P/47 and recovery was made under Exhibit-P/26. The Mobile is recovered under Article-14. Apart from cellphones, the prosecution also relied upon recovery of the knife basing on the disclosure of statement of Sandeep under Exhibit-P/45 and seizure was made under Exhibit-P/24. The recovery witnesses have supported the recovered the cellphones. Though, the recovery of knife was proved by the prosecution but no incriminating evidence was found on the knife, which is recovered at the instance of Sandeep. In the absence of such incriminating material to show use of the knife to commit the offence, the recovery has no significance.

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18. The recovery of cellphones were also proved by the recovery witnesses, however, admittedly, these cellphones and sims were not standing in the name of the appellants. The appellants have not explained how the cellphones came into their possession when they are not standing in their names. It is proved that the cellphones were recovered from them only. It is for them to explain under the circumstance, which they came into the possession of the said cellphones. Such an explanation is lacking in the present case.

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19. Now the question is whether the location of such cellphones proved that the appellants were present at the place of offence at that relevant time and date. The evidence of the Nodal Officer PW-34 and PW-35 clearly demonstrate that they could only prove that the calls were made with the tower located within the area, under which, the scene of offence falls. There is no specific identification of the location of these cellphones at the place of offence. Further, the place of offence is a public place. Even the location traced at the place of offence since it is a public place, there is likelihood of appellants were innocently moving at the said place. Basing on such a circumstance, it cannot be conclusively proved that the appellants were present at the location so as to prove the circumstance of last seen. When the direct witnesses are not supported, the sole circumstance of use of those cellphones through the tower and the scene of offence falls under the said tower, do not point out the involvement of the appellants in the commission of the said offence.

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20. We found that the conviction basing on the said circumstance is unsustainable, therefore, the impugned conviction and sentence are required to be interfered with.

21. Consequently, the present Criminal Appeal is allowed. The judgment and conviction date 26.02.2026 passed by learned Additional Session Judge, Bhadra, District Hanumangarh in Sessions Case No. 17/2019 arising out of an FIR No. 223/2018 registered at PS-Bhirani, District-Hanumangarh, is quashed and set aside. The appellants are acquitted from the aforesaid charged offences and they shall be released forthwith, if not required in any other criminal case. Fine amount, if any, recovered from the appellants shall also be refunded back to the appellants.

22. Pending application(s), if any, also stand disposed of.

(ASHUTOSH KUMAR),J **(MUNNURI LAXMAN),J**

Crt_4 (2097)
S-A/11
PRADEEP SONGARA

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