
(2012) 09 JH CK 0128

In the Jharkhand High Court

Case No : I.A. No. 1184 of 2012 in Cr. Appeal (DB) No. 1077 of 2007

Hibaran Yadav and Others

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision : 12-09-2012

Acts Referred:

Penal Code, 1860 (IPC) — Section 302, 34, 389(1)

Citation : (2013) 3 AJR 117 : (2012) 4 JCR 692

Hon'ble Judges : Prashant Kumar, J;Dhirubhai Naranbhai Patel, J

Bench : Division Bench

Advocate : P.P.N. Roy, for the Appellant; Mukesh Kumar, Assistant Public Prosecutor and Mr. Ranjan Kumar Singh, for the Respondent

Final Decision : Dismissed

Judgement

D.N. Patel, J.—The present application has been preferred u/s 389(1) of the Code of Criminal Procedure for suspension of sentence awarded by the Addl. Sessions Judge, Fast Track Court, Raj Mahal in Sessions Case No. 213 of 2005 / Sessions Trial No. 140 of 2007, whereby the present applicant-Prabhu Yadav, who is original accused no. 5 and appellant no. 5, is convicted mainly for the offence punishable u/s 302 to be read with Section 34 of the Indian Penal Code for life imprisonment. We have perused the records and proceedings of Sessions Trial and heard counsels for both the sides for prayer for suspension of sentence awarded to the appellant no. 5.

2. Having heard counsel for both the sides and looking to the evidences on record, there is prima facie case against the present appellant, who is Prabhu Yadav. As the criminal appeal is pending, we are not much analyzing the evidences on record, but suffice it to say that as per the prosecution witnesses, the case of the prosecution is based upon the two eye-witnesses who are P.W. -1 & P.W. -5. Looking to their depositions, they have narrated the incident at length and the role played by the appellants-accused including the present applicant. Moreover, the depositions of these two eye-witnesses is also getting enough

corroboration by the depositions of other prosecution witnesses. Previously, the prayer for suspension of sentence by the very same applicant was canvassed and rejected by this Court. This is second attempt. Looking to the evidences on record and gravity of offence, quantum of punishment and the manner in which the present appellant is involved in the offence as alleged by the prosecution, we are not inclined to suspend the sentence awarded to the appellant no. 5, namely, Prabhu Yadav, by the trial court.

3. Learned Counsel for the appellant has vehemently submitted that so called witnesses P.W. -1 & P.W. -5 are not the eye-witness and vehemently submitted that the statement were recorded delayed and has also relied upon the decision rendered by the Hon"ble Supreme Court recorded in State of Orissa Vs. Mr. Brahmananda Nanda, . We are not accepting the argument canvassed by the counsel for the appellant for the reason that at the stage of prayer for suspension of sentence, we are not deciding the criminal appeal itself. We are looking at the prima facie case and other evidences in light of depositions given by the prosecution witnesses specially P.W. -1 & 5. It ought to kept in mind that the offence has been committed on 10.12.2004 at 6:00 p.m., whereas the F.I.R. is registered on 12.12.2004 at about 09:05 a.m. Informant is P.W. -6 and he is not an eye-witness. It always depends upon the investigating agency and it is not in hand of the eyewitnesses for immediate recording of the statement. The benefit of delayed recording of the statement of the eye-witnesses cannot be given to the accused. There may be some defect by the Investigating Officer in not recording immediately the statement of the eyewitnesses, but it does not mean that the benefit should be given to the accused. As this is not a stage of final hearing of the criminal appeal, but suffice it to say that for the disposal of the present application, these two eye-witnesses have clearly involved the appellant along with other co-accused and therefore we are not inclined to suspend the sentence awarded to present appellant, who is original accused no. 5. There is no change in circumstance whatsoever after the previous prayer for suspension of sentence has been rejected by this Court, except lapse of time. Accordingly, the prayer for suspension of sentence awarded to the present appellant who is appellant no. 5 namely, Prabhu Yadav, is hereby dismissed.

4. Nonetheless, we hereby direct the Registry to get the paper book be prepared with neatly typed copy of the depositions of the witnesses and other documents as required under Rule no. 190 and 191 of the High Court of Jharkhand Rules, 2001.

5. Criminal Appeal no. 1077 of 2007 is fixed for final hearing in the 3rd Week of January, 2013. I.A. No. 1184 of 2012 is, accordingly, dismissed.