

(2012) 09 JH CK 0130

In the Jharkhand High Court

Case No : Criminal Appeal (DB) No. 837 of 2012

Ishwar Murmu and Pandu Murmu

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision : 11-09-2012

Acts Referred:

Penal Code, 1860 (IPC) — Section 302

Citation : (2012) 09 JH CK 0130

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

Bench : Division Bench

Advocate : A.K. Kashyap and Mr. S.N.P. Rai, for the Appellant; Shekhar Sinha, Assistant Public Prosecutor, for the Respondent

Judgement

D.N. Patel, J.—This criminal appeal is admitted and will be heard along with Cr. Appeal No. 92 of 2010. Records and proceedings of the Session Trial No. 259 of 2006 be called for from the trial court, so that paper books be prepared as required under Rule No. 190 and 191 of High Court of Jharkhand Rules 2001 with neatly typed copies of depositions of witnesses and other documents. We have heard counsel for both the sides for prayer of suspension of sentence awarded by Additional Sessions Judge-I, Sahibganj in Sessions Trial No. 259 of 2006, whereby the present appellants, who are original accused No. 3 and 4 punished mainly for the offence u/s 302 of the IPC by judgment of conviction and order of sentence dated 7th /14th February 2008.

2. Having heard Learned Counsel for both the sides at length and looking to the evidences on record of the Session Trial, there is prima-facie case against both the appellants (original accused No. 3 and 4). As the criminal appeal is pending, we are not much analyzing the evidences on record, but suffice it to say that there are several eye witnesses of the incident, which has taken place on 7th May 2006 at about 8:30 A.M. P.W. -2, P.W. -4, P.W-6 and P.W-8 are the eye witnesses of the incident. Looking to their depositions, appearance of weapon so used by the appellants for causing murder of the deceased, and, looking to the

depositions of other prosecution witnesses, the depositions of eye witnesses are getting enough corroboration, specially the deposition given by P.W-13, who is medical officer, Doctor Shiv Chandrika Hansda, who has carried out post-mortem of the deceased, which is Ext-5 of the record of the trial court and also looking to the evidence of P.W-12, the I.O., depositions of the eye witnesses are getting enough corroboration about the place of offence, time of offence etc.

3. In view of these evidences, there is prima-facie case against these two appellants (original accused No. 3 and 4), and, also looking to the gravity of offence, quantum of punishment and the manner in which, these two appellants were involved, as alleged by the prosecution, we are not inclined to suspend the sentence awarded by the trial court to these two appellants (original accused No. 3 and 4). Hence, prayer for suspension of sentence is not accepted by this Court. Counsel for the appellants has pointed out that criminal appeal No. 92 of 2010, which was preferred by original accused No. 1 and 2 has already been admitted and sentence awarded to original accused No. 1 and 2 has been suspended. This contention is not accepted for suspension of sentence of these two appellants (original accused No. 3 and 4), looking to the role played by them as per eye witnesses, P.W-2, P.W-4, P.W-6 and P.W-8. Role played by these two appellants in causing murder of deceased is clearly distinct from the role played by original accused No. 1 and 2.