
(2012) 09 JH CK 0169

In the Jharkhand High Court

Case No : Criminal Appeal (D.B.) No. 377 of 2005

Manoj Kumar @ Manoj Kumar Yadav and Others

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision : 20-09-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 389
Penal Code, 1860 (IPC) — Section 302

Citation : (2010) 4 JLJR 297

Hon'ble Judges : P.P. Bhatt, J;Dhirubhai Naranbhai Patel, J

Bench : Division Bench

Advocate : P.K. Verma, for the Appellant;

Final Decision : Dismissed

Judgement

D.N. Patel, J.

I.A. No. 1210 of 2012

1. This interlocutory application has been preferred u/s 389 of the Code of Criminal Procedure for suspension of sentence awarded to the appellant No. 1 Manoj Kumar @ Manoj Kumar Yadav, who is original accused No. 1 in Sessions Case No. 151 of 1998/36 of 2002, during Pendency of this criminal appeal. The conviction awarded by the 4th Addl. Sessions Judge (F.T.C. No. 1), Godda vide order dated 18th March, 2005 is mainly for the offence u/s 302 of the Indian Penal Code. We have heard the leaned counsel for both sides. Looking to the evidence on record, there is prima facie case against the present applicant. As the Criminal Appeal is pending, we are not much analyzing the evidences on record but suffice it will be for us to say that case of prosecution is that on 16th September, 1997 the incident has taken place in the morning hour and immediately thereafter the First Information Report was registered on the same day in which the accused were named including the present applicant. It appears from the evidence of the prosecution witnesses that the case of the prosecution

is based upon the deposition of the eyewitnesses who are PW. 3 and 4. The deposition of PW. 3 is getting enough corroboration from the deposition of PW. 2 and PW. 4 who are independent witnesses of the facts immediately after the incident had taken place. PW. 3 has stated that the applicant-accused having sharp cutting instrument "Chura" caused injury upon the body of the deceased, namely Jalo Devi, who was present at the relevant time and PW. 2 and PW. 4 who are co-villagers and independent witnesses, they rushed to the scene of offence immediately after hearing the shout, etc and they saw accused including the present applicant, namely Manoj Kumar @ Manoj Kumar Yadav, coming out of the house of the victim with weapon "Chura". Thus PW. 2 and PW. 4 are confirming the time of the offence, the place of the offence and they saw the accused coming out of the house of the victim and these two witnesses also confirmed about the weapon in the hands of the accused. Thus, evidence of PW. 3 is enough corroboration from these two witnesses. Similarly looking to the deposition of PW. 6 Dr. Ashok Kumar, is confirming the injuries upon the body of the deceased and one of them at vital part of the body capable of being caused by sharp cutting weapon. As the criminal appeal is pending, this much narration is sufficient which constitute prima facie case against the present applicant.

2. Counsel for the applicant has argued out his case at much length by reading the deposition of the witnesses and submitted that there is no eyewitness of the incident. He has already relied upon the cross-examination of PW. 3 and has also narrated that he was out of the house and has also pointed out that who caused what injury is also not clear. He also pointed out that the present applicant was all along on bail during trial. None of these contentions are accepted by this Court mainly for the reason that this is stage of appreciation of prima facie evidence while deciding the application u/s 389 of the Cr. P.C. The evidence of the prosecution witnesses is to be appreciated as a whole and also looking to the documents and who caused what injury, PW. 3 has given clear evidence about use of sharp cutting instrument by the present applicant. Hence, there is no fresh ground for suspension of sentence.

3. Looking to the facts that the conviction is based on the deposition of more than one eyewitness of the incident and looking to the depositions of these witnesses, there is prima facie case against the present applicant in the offence of murder of the deceased. Moreover, these evidences also get corroboration by the medical evidence given by PW. 6 Dr. Ashok Kumar. Moreover, previously also the applicant's prayer for suspension of sentence awarded to him was rejected by different Division Benches and this is the 4th/5th attempt made on behalf of the applicant for suspension of sentence awarded to him and there is no change in the circumstances after the last dismissal of the interlocutory application filed on behalf of the accused-applicant for suspension of the sentence, and also looking to the gravity of the offence and quantum of punishment, we are not inclined to suspend the sentence awarded by the 4th Addl. Sessions Judge (F.T.C. No. 1), Godda in Sessions Case No. 151 of 1998/36 of 2002 to the applicant, namely Manoj Kumar @ Manoj Kumar Yadav, during Pendency of this criminal

appeal. I.A. No. 1210 of 2012 is, therefore, dismissed.