
(2009) 11 JH CK 0149
In the Jharkhand High Court

Ruplal Murmu and Babudan Murmu

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision : 16-11-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 389(1)
Penal Code, 1860 (IPC) — Section 302, 307, 34

Citation : (2009) 11 JH CK 0149

Hon'ble Judges : Rakesh Ranjan Prasad, J;Dhirubhai Naranbhai Patel, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

D.N. Patel, J.—The present appeal has already been admitted vide order dated 11th May, 2005 and this is second attempt for getting the order u/s 389 (1) of the Code of Criminal Procedure, for suspension of sentence, awarded by the trial court to appellant-accused No. 1, namely Ruplal Murmu, for the offence punishable u/s 302 of the Indian Penal Code to be read with Section 34 of Indian Penal Code as well as u/s 307 of the Indian Penal Code to be read with Section 34 of the Indian Penal Code, during pendency of this appeal.

2. Having heard learned Counsel for the appellant-accused No. 1 and looking to the evidences on record, there is prima facie case against the present appellant-accused, who is Ruplal Murmu, original accused No. 2.

3. Learned Counsel for the present appellant-accused has argued out the case in much detail and fine nicety of the prosecution witnesses and depositions have been pointed out. Suffice it to say that as the criminal appeal is pending, we are not much analyzing the evidences on record, but, looking to the deposition given by PW1, who is eye witness of the incident, has stated clearly the role played by the appellant-accused, the weapon used by the appellant-accused, assault upon Thakur Murmu-deceased. Postmortem of Thakur "Murmu is done by PW2-Dr. Debashish Rakshit and looking to the deposition of PW1, there is material against this appellant-accused. Weapon with which injuries have been caused to

deceased as per PW1 is corroborated by the medical evidence, given by PW2.

4. Further, looking to the disposition given by PW7 also, vital role has been played by the appellant-accused. This witness is also ocular evidence. Counsel for the appellant-accused has submitted that partly this PW-7 has given false evidence and therefore, he is not a reliable witness. This contention is not accepted by this Court, at this stage. Even otherwise also, *falsus in uno, falsus in omnibus*, the maxim is not applicable in criminal jurisdiction and therefore, rightly it has been observed by the trial court in internal page-7 of the impugned judgment that though partly he is giving incorrect evidence, but, he is ocular evidence, so far as the present appellant is concerned, so far as the weapon used by the appellant-accused is concerned as well as, so far as assault upon Thakur Murmu (deceased) is concerned. Thus, deposition of PW1 is corroborating by PW7, *prima facie*, at this stage. As the criminal appeal is pending, we are not going much into the details.

5. Likewise, there is PW9, who is an eye witness and the wife of the deceased-Thakur Murmu. She has also narrated clearly the role played by this appellant-accused and her deposition is also corroborating to the depositions of PW1 and PW7 and medical evidence (PW2) is also, *prima facie*, corroborating.

6. All these evidences constitute a *prima facie* case against the present appellant-accused. This is a case of more than one murders and looking to the role played by the appellant-accused, the gravity of offence, the quantum of punishment and the manner in which the present appellant-accused is involved in this offence, as alleged by the prosecution, we are not inclined to suspend the sentence, awarded to the present appellant No. 1, namely Ruplal Murmu (original accused No. 2), by the trial court.

7. There is no substance in this interlocutory application and hence, the same is, hereby, dismissed.