
(2015) 02 JH CK 0028

In the Jharkhand High Court

Case No : Criminal Appeal (D.B.) No. 222 of 2013 and I.A. No. 1881 of 2014

Uma Pado Dan and Others

APPELLANT

Vs

State of Jharkhand

RESPONDENT

Date of Decision : 20-02-2015

Acts Referred:

Citation : (2015) 02 JH CK 0028

Hon'ble Judges : Virender Singh, C.J.; P.P. Bhatt, J.

Bench : Division Bench

Advocate : A.K. Kashyap, Senior Advocate, for the Appellant; Shekhar Sinha, APP, Advocates for the Respondent

Final Decision : Allowed

Judgement

Virender Singh, C.J.

I.A. No. 1881 of 2014

1. Admittedly, this is the second attempt by the applicant-appellant namely Uma Pado Dan @ Uma Pad Dan for concession of suspension of sentence as his earlier bail application was declined by the Court, vide order dated 2nd of September, 2013. Admittedly, the applicant-appellant was on bail during the trial and now in custody since the date of his conviction. He remained in custody for about six months during the trial as stated by Mr. Kashyap, learned senior Advocate.

2. At the very outset, Mr. Kashyap, submitted that while arguing the earlier bail application, moved by the applicant-appellant and his co-convict namely Bishnu Pado Dan @ Bishnu Dan, perhaps, he could not render proper assistance to the Court viz-a-viz the merits of the case and that appears to be the ground for rejection of the bail of the applicant-appellant. He submitted that the co-convict Bishnu Pado Dan, however was granted concession of suspension of sentence by the Court observing that although the part attributed to him was of giving the Lathi blow on the person of the deceased, but in the medical evidence, injury by blunt weapon was conspicuously missing. Mr. Kashyap, thus submitted that he

may be heard on merits once again to avoid miscarriage of justice.

3. Mr. Kashyap submitted that in all there are three accused in this case who faced the trial, Krishna Pado Dan, the third convict has filed his separate Appeal and is in custody since the date of his formal arrest.

4. Adverting to the merits of the present case Mr. Kashyap submitted that the case set up in the First Information Report or during the trial, is that on the fateful day, when the husband (since deceased) of the first informant was returning home from attending usual natural call and reached near a particular place, all the three accused, who were standing there surrounded him. At that time the applicant-appellant was armed with sword, Bishnu Pado Dan (already released on bail) armed with Lathi and Krishna armed with Chura. The allegation further is that Bishnu gave direction for killing the deceased and thereafter the present applicant-appellant gave a blow with sword on the nose of the deceased, and thereafter, Krishna Pado Dan, who was armed with Chura gave repeated blows in the abdomen of the deceased.

5. Learned counsel submitted that if one looks at the Post Mortem Report of the deceased, there are as many as six injuries and but for injury No. 2, which is incised wound, 1 1/2" right to the umbilicus, other main injuries are stabbed wounds and in the opinion of doctor stabbed wounds were showing one angle acute sharp and the other ragged one.

6. Learned senior counsel submitted that it is the specific case of the prosecution during the trial that all the injuries in the abdomen of the deceased were caused by accused Krishna Pado Dan only and it appears that injury No. 2, which is incised wound near umbilicus which was not giving any impression of a ragged wound, perhaps was taken by the Court as an injury caused by sword whereas such like injury near the umbilicus could also be possible by the Chura, the skin being not that stiff or hard, rather a very tender area. Learned senior counsel submitted that injury No. 2, by any stretch of imagination, could not be possible by sword. He submitted that otherwise also the part attributed to the applicant-appellant, is of causing only one injury on the nose of the deceased by sword and the said injury is missing on the person of the deceased in the Post Mortem Report. Learned senior counsel thus submitted that if the prosecution case is appreciated from that angle, it can be safely said that the applicant-appellant has not caused any injury on the person of the deceased, thus his case, on facts is at par with Bishnu Pado Dan, who has already been released on bail by this Court vide order dated 2nd of September, 2013.

7. Whatever is stated by Mr. Kashyap at Bar, in our considered view, appears to be a good ground for appreciating the case of the prosecution on merits once again so as to avoid any miscarriage of justice.

8. The only opposition raised by Mr. Sinha, learned Addl. Public Prosecutor appearing for the State is that the application of the applicant-appellant already stands dismissed vide order dated 2nd September, 2013.

9. Having regard to the totality of facts and circumstances of the case, in our considered view, declining bail to the applicant-appellant, during the pendency of the instant appeal, would be unjustified, despite he has once faced rejection. Admittedly, he was on bail during trial also.

10. Resultantly, the instant application is allowed as prayed for. Applicant-appellant Uma Pado Dan @ Uma Pad Dan shall be released on bail, on his furnishing bail bond of Rs. 10,000/- (Rupees Ten Thousand), with two sureties of the like amount each, to the satisfaction of learned trial court/learned Additional Sessions Judge, No. -II, Dhanbad, in Sessions Trial No. 140 of 1999.