

Ramashray Rajwar and ors Vs. State of Jharkhand

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Court : Jharkhand

Decided On : Jun-19-2013

Appellant : Ramashray Rajwar and ors

Respondent : State of Jharkhand

Judgement :

INTHEHIGHCOURTOFJHARKHANDATRANCHI I.A.No.1925of2013 In
Cr.Appeal(DB)No.255of2007 1.RamashrayRajwar 2.NareshRajwar
3.RajendraRajwar Appellants Versus TheStateofJharkhand Respondent CORAM:
HON'BLEMR.JUSTICED.N.PATEL
HON'BLEMR.JUSTICESHREECHANDRASHEKHAR FortheAppellants :
Mr.A.K.Kashyap,Sr.Advocate FortheRespondent : Mr.ShekharSinha,A.P .P.
09/Dated:19 th June,2013 PerD.N.Patel,J.:

1. Presentinterlocutoryapplicationhasbeenpreferredbyappellantno.3, namely,RajendraRajwar(originalaccusedno.2intheSessionsTrial)under Section 389 of the Code of Criminal Procedure for suspension of sentence awardedtohimbythetrialcourt.Thisappellantahasbeensentencedforlife imprisonment mainly for the offence punishable under Section 302 of the IndianPenalCodeandhehasalsobeenpunishedunderotherSectionsofthe IndianPenalCode.

2. Having heard learned counsel for both the sides and looking to the evidences on record, there is prima facie case against appellant no.

3. Previously also, I.A.No.776 of 2011 was preferred for suspension of sentence and the same was rejected vide order dated 1st July, 2011 by detailed speaking order. Paragraph 4 whereof reads as under:

4. Having heard both the sides and looking to the evidence on record that there is sufficient evidence against the present applicant Naresh Rajwar (original accused No.3) of Sessions Trial No.43 of 2004. As the Criminal Appeal is pending, we are not much analyzing the evidence on record in detail, though the Counsel for the applicant has argued out the case in much detail. Suffice it to say that looking to the evidence on record, it appears that P.W.1 is the injured eyewitness, who is also the informant, has given clear evidence before the Trial Court which involves the present applicant that he has used sharp cutting instrument to cause death of the deceased. Moreover, the evidence given by the P.W.1 is getting enough corroboration by the deposition of the other witnesses like P.W.2, P.W.3 and P.W.10. These three are also the eyewitnesses. Moreover, the deposition of all these four eye witnesses is also getting enough corroboration by medical evidence given by P.W.12. There are 8 injuries upon the deceased. The Counsel for the applicant has insisted for detailed speaking order but as this Criminal Appeal is pending, we are not going in much detail but 2 on the point of light, at the time of incident, the Counsel for the applicant has concentrated much for the identification of the accused. Suffice it to say on this point that the accused are neighbours and known to the victim i.e. P.W.1 and on the basis of voice also, there can be an identification. At this stage, we are not going into the depositions given by other prosecution witnesses also, but, the aforesaid evidences are sufficient to constitute a prima facie case against the applicant. Moreover, mathematical accuracy and statistical nicety cannot be expected from the eyewitness to give accounting of the injuries sustained by the deceased at the behest of the accused. In view of the evidence on record, there is a prima facie case against the applicant, namely, Naresh Rajwar and looking to the gravity of the offence, quantum of punishment and the manner in which the applicant is involved in the offence, as alleged by the prosecution, we are not inclined to suspend the sentence awarded to the

applicant, namely,
Naresh Rajwar. There is no substance in this Interlocutory Application,
hence, the same is hereby dismissed.

3. Looking to the evidence of the prosecution witnesses especially P.W.1, P.W.2, P.W.3 and P.W.10 to be read with medical evidence given by P.W.12 and P.W.13, there is prima facie case against appellant no.

3. In view of these evidences on record, we are not inclined to suspend the sentence awarded to appellant no. 3 by the trial court and, hence, his prayer for suspension of sentence is, hereby, rejected.

4. Nonetheless, looking to the period of custody as submitted by learned counsel for the appellants that appellant no. 3 is in judicial custody from approximately 10 years, we hereby direct the Registry of this Court to get the paper books prepared with neatly typed copies of depositions of the prosecution witnesses and other documents as required under Rules 190 and 191 of the Jharkhand High Court Rules, 2001 and the matters shall be listed immediately on the board for final hearing in its serial number as per period of custody.

5. I.A.No.1925 of 2013 is, accordingly, dismissed. (D.N.Patel,J.)
(Shree Chandrashekhar,J.) Ajay/

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