

HIGH COURT OF CHHATTISGARH, BILASPUR

Order Sheet

CRA No.1361 of 2018

- Devprasad @ Baiga S/o Akalu @ Amalu Ram Aged About 29 Years R/o Village Brahmpur Kasamuda, P.S. Premnagar, District - Surajpur, Chhattisgarh., District : Surajpur, Chhattisgarh

---- Appellant

Versus

- State Of Chhattisgarh Through The S.H.O. Police Station - Premnagar, District - Surajpur, Chhattisgarh., District : Surajpur, Chhattisgarh

---- Respondent

CRA No.1625 of 2018

1. Ashok @ Lambu @ Muneshwar Urre S/o Late Samalsaay Aged About 32 Years R/o Village Keshavpur L(Kishori) Khutanpara ,police Station Ramanujganj ,district Surajpur Chhattisgarh., District : Surajpur, Chhattisgarh
2. Devprasad @Baiga S/o Amaalu Ram Aged About 29 Years R/o Village Brahampur Kasmunda ,police Station Prem Nagar District Surajpur Chhattisgarh., District : Surajpur, Chhattisgarh

---- Appellants

Versus

- State Of Chhattisgarh Through The Station House Officer Prem Nagar District Surajpur Chhattisgarh., District : Surajpur, Chhattisgarh

---- Respondent

18/03/2019	Shri A. K. Shukla and Ms. Neha Verma, counsel for appellant/s. Shri Subhash Yadav, Dy.GA for State. Heard on application for suspension of sentence and grant of bail filed by the appellants in aforesaid two appeals (Criminal Appeal No.1361 & 1625 of 2018). The appellants have been convicted vide impugned judgment of conviction and order of sentence dated 21-08-2018 passed by the learned Second Additional Session Judge, District Surajpur in Sessions Trial No.36/2017 for the offences punishable under Section 302 & 201 of IPC and they were sentenced to undergo life imprisonment and fine of Rs.50/- and in

default of payment of fine, they have to undergo additional rigorous imprisonment for three months under Section 302 of IPC and they have also to undergo rigorous imprisonment for seven years and fine of Rs.50/-, in default of payment of fine, they have to undergo additional rigorous imprisonment for three months under Section 201 of IPC. All the sentences were ordered to run concurrently.

Learned counsel appearing for the appellant-Devprasad would argue that as far as Devprasad is concerned, his conviction is based only on the ground that his name having been mentioned on the memorandum of the co-accused-Ashok @ Lambu and except this, there is no material against the appellant-Devprasad, therefore, the present is a case of no evidence.

Learned counsel appearing for the appellant-Ashok @ Lambu would argue that the dead body was recovered from an open place and therefore, recovery of footwear of the deceased from *jungle* does not constitute incriminating evidence against the appellant and the rod alleged to have been seized, is not proved to having been found to be stained with human blood much less that of the deceased, therefore, his conviction is based only on suspicion without there being any clinching circumstantial evidence.

On the other hand, learned State counsel opposed the prayer for grant of bail by submitting that according to the statement of Chhoti, PW-4, there was a motive for the appellants to kill the deceased Rajkumar, because Rajkumar was having an affair with Chhoti, of which, the appellant-Ashok was envious. He would further argue that though footwear of the deceased was though found in *jungle*, it was recovered at the instance of the appellant-Ashok@ Lambu, which was identified by the wife of the deceased-Rajkumar. He would also argue that though, there is no specific report that the bloodstains found on the rod, was that of the deceased, it is the appellant-Ashok@ Lambu to explain as to how blood was found in the rod.

Having considered the submission of learned counsel for the parties and the material, on the basis of which, the appellants have been convicted, particularly taking into consideration that the rod was not found to be stained with human blood and that the footwear of the deceased was found in the *jungle* and that the dead body was already found in *jungle*, we are inclined to grant bail to both the appellants-**Devprasad and Ashok @ Lambu**.

Accordingly, the application for suspension of sentence and grant of bail filed by the appellants in aforesaid two appeals (Criminal Appeal No.1361 & 1625 of 2018 is allowed. It is directed that the substantive jail

sentence imposed upon the appellants shall remain suspended during pendency of this appeal and they shall be released on bail on each of them furnishing a personal bond in the sum of Rs.25,000/- with two local sureties of the like amount to the satisfaction of the trial Court for their appearance before the concerned trial Court on **16-05-2019** and on all such further dates as may be directed to them, interval being not less than six months, till final disposal of the appeal.

List this matter for final hearing.

Certified copy as per rules.

SD/-
(Manindra Mohan Shrivastava)
Judge

SD/-
(Rajani Dubey)
Judge