

IN THE HIGH COURT OF JHARKHAND AT RANCHI

Criminal Appeal (D.B.) No.275 of 2023

Lakhan Kumar Mahto @ Lakhan Mahto, aged about 26 years, s/o late
Puran Mahto, r/o Mouza Chatti, Bariatu, PO & PS-Keredari, District-
Hazaribagh ... **Appellant**

Versus

The State of Jharkhand **Respondent**

**CORAM:HON'BLE MR. JUSTICE SUJIT NARAYAN PRASAD
HON'BLE MR. JUSTICE SUBHASH CHAND**

For the Appellant :Mr. P.P.N. Roy, Sr. Advocate

Mrs. Pragati Prasad, Advocate

For the Respondent :Mrs. Nehala Sharmin, APP

Order No.07/Dated:24th October, 2024

I.A. No. 865 of 2024

1. This needs to refer herein that on earlier occasion the applicant has moved before this Court by filing interlocutory application being I.A No.5404 of 2023 for suspension of sentence, but after arguing at length the said interlocutory application was not pressed. Thereafter, by way of present interlocutory application being I.A No.865 of 2024, the applicant has made his second attempt for making a prayer for suspension of sentence.
2. The instant interlocutory application has been filed under Section 389(1) of the Cr.PC for keeping the sentence in abeyance in connection with the judgment of conviction dated 21.12.2022 and order of sentence dated 22.12.2022 passed by the learned District & Additional Sessions Judge-IV, Hazaribag in connection with S.T. No.64 of 2021 arising out of Keredari PS Case No.75 of 2020 corresponding to G.R. Case No.01 of 2021 whereby and whereunder, the applicant has been convicted under Sections 302 of the IPC and sentenced to undergo imprisonment for life and a fine of Rs.10,000/- for the said offence under Section 302 of the I.P.C. and in default of payment, further directed to undergo SI for six months.
3. It has been contended by Mr. P.P.N Roy, the learned senior counsel assisted by Mrs. Pragati Prasad, the learned counsel appearing for the

applicant that it is the case where the prosecution has failed to prove the case beyond all reasonable doubt reason being that there is no cogent evidence to establish the charge against the present applicant. It has been submitted that merely the applicant is the husband of the deceased and, as such, applying the principle laid down under section 106 of the Indian Evidence Act, the judgment of conviction has been passed.

4. It has further been submitted that the prosecution has also miserably failed to establish the prosecution version due to non-examination of the minor daughter, having aged about 7 years at the time of occurrence, taken birth from the wedlock of the deceased and the present applicant.
5. Further ground has been taken by referring to testimony of the daughter who has also not found the commission of crime of murder.
6. The learned senior counsel for the applicant, based upon the aforesaid grounds, has submitted that it is a fit case where the present applicant be released from judicial custody by suspending his sentence.
7. While, on the other hand, Mrs. Nehala Sharmin, learned APP appearing for the respondent-State of Jharkhand has vehemently opposed the prayer for suspension of sentence. It has been contended that the judgment of conviction is based upon the applicability of section 106 of the Evidence Act reason being that the applicant who is the husband was all along in the house and the death took place within the four corner of the matrimonial house of the deceased and, as such, the prosecution has come out with the formational fact and, hence, it is the accountability and onus of the applicant to disprove the said charge, But no such plea has been taken by the applicant that as would be evident from the testimony of the witnesses, particularly, the cross-examination part thereof.
8. It has further been submitted by referring to the statement recorded under section 313 of the Cr.P.C of the applicant wherein he has admitted the fact that while the murder was committed, he along with his minor daughter was at his house where the occurrence took place. Therefore, if the learned trial Court has applied the principle as laid down under section 106 of the Evidence Act, it cannot be said that any error has been

committed in passing the judgment of conviction, as such, it is not a case where the sentence may be suspended.

9. We have heard the learned counsel for the parties and gone across the findings recorded by the learned trial Court as also the testimony of the witnesses as available in the lower Court records which contains the exhibits, the statement of the applicant recorded under section 313 of the Cr.P.C. as also the post-mortem report of the deceased with the opinion thereof the doctor i.e. PW8.
10. This Court has found that as per the prosecution version the deceased who was the wife of the applicant was killed while she was in her matrimonial house. The dead body was found in the “*Goshal*” which was inside the house.
11. It is also evident from the testimony of the witnesses that the relation between the applicant and the deceased was not cordial due to issue of demand of dowry made by the applicant. PW3, namely, Manoj Mahto, the brother of the deceased, has supported the prosecution version. The issue of *panchayat* for the purpose of settlement of the issue of dowry demand has also been surfaced.
12. PW8, the doctor, who conducted the post-mortem examination of the deceased, has found that the reason of death was due to asphyxia and manual strangulation.
13. The applicant while recording his statement under section 313 of the Cr.P.C has stated that he along with his minor daughter was at his house where the occurrence took place.
14. In view of the aforesaid discussions, this Court, is of the view that the applicant has failed to make out a prima-facie case for suspension of sentence.
15. Accordingly, I.A. No. 865 of 2024 stands rejected.
16. It is made clear that any observation made hereinabove will not prejudice the case on merit, since the criminal appeal is lying pending before this Court for its consideration.

17. In view thereof, I.A. No. 865 of 2024 stands disposed of with the aforesaid observation and direction.

(Sujit Narayan Prasad, J.)

(Subhash Chand, J.)

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