

IN THE HIGH COURT OF JHARKHAND AT RANCHI

Cr. Appeal (D.B.) No. 372 of 2023

Dhiren Yadav	-----	...	...	Appellant
	Versus			
The State of Jharkhand		...	...	Respondent

**CORAM: HON'BLE MR. JUSTICE SUJIT NARAYAN PRASAD
HON'BLE MR. JUSTICE NAVNEET KUMAR**

For the Appellant	-----	: Mr. A.K. Kashyap, Sr. Advocate
		: Mr. Lalit Yadav, Advocate
For the Respondent		: Mr. Anup Pawan Topno, A.P.P.

Order No. 07 / Dated: 18th August, 2023
I.A. No. 6139 of 2023

Heard learned counsel for the parties.

2. The instant Interlocutory Application bearing No. 6139 of 2023 has been filed under Section 389(1) of the Code of Criminal Procedure for suspension of sentence dated 17.02.2023 passed in Sessions Trial No. 64 of 2021, arising out of Poraiyahat P.S. Case No. 15 of 2020, corresponding to G.R. No. 1027 of 2008 by the Court of learned Sessions Judge, Godda, whereby and where under the appellant has been convicted under Section 307/34 of the Indian Penal Code and directed to undergo ten years rigorous imprisonment with fine of Rs.10,000/- and in default of payment of fine to further undergo simple imprisonment for six months.

3. Mr. A.K. Kashyap, learned senior counsel appearing for the appellant assisted by Mr. Lalit Yadav, learned counsel have submitted that it is a case where the prosecution has miserably failed to prove the charge beyond all shadow of doubt.

4. Such ground has been taken on the basis of the testimony of the prosecution witnesses more particularly P.W.-3 who has deposed that the bullet injury was given by the appellant behind the back and as such it is improbable for a person to look behind that who has assaulted by the bullet, since, it is the case of the prosecution that five persons were accompanying on the motorcycle and the informant /victim was intercepted.

5. The submission, therefore, has been made that in the group of five persons, it is highly improbable to find who has given the bullet injury but, without taking into consideration the aforesaid fact the learned Trial Court has convicted for the offence under Section 307/34.

6. It has further been contended that the testimony of P.W.-3, the injured witness, has found no corroboration with the testimony of the doctor, since, he has not given any opinion regarding the nature of injury, since, the injured victim, was referred to the higher medical centre for better treatment and as such the opinion was reserved till the final reports came from the referred centre.

7. Learned senior counsel on the aforesaid premise has submitted that it is not a case where the prosecution has been able to prove the charge beyond all shadow of doubt, as such, it is a fit case where the sentence is fit to be suspended.

8. While on the other hand Mr. Anup Pawan Topno, learned Additional Public Prosecutor appearing for the opposite party State has submitted that since the prosecution is based upon the testimony of the injured witness, P.W.-3, who has sustained injury, it has been submitted by referring to the testimony of P.W.-3 as available in the Lower Court Record that the victim while intercepted by five persons including the appellant the victim in order to save his life has tried to flee away.

9. It has been submitted by referring to the testimony of P.W.-3 that the Mahabir Turi and Bhuwadeshwar Yadav caught him and Dhiren Yadav fired a gun shot which caused injury on his back, the victim also received fire arm injury on his left side of back and fell down. It has further been submitted that then Mahabir Turi told that “चलो साला खत्म हो गया”, then Adhiklal Mistri, P.W.-1, came on a motorcycle and took him to Poraiyahat Hospital where the police recorded his statement.

10. The Additional Public Prosecutor has further submitted that since the doctor has also opined about the injury sustained by fire arm as would be evident from the testimony of the doctor, P.W.-8.

11. Further contention has been made that merely because there is no opinion of nature of injury, on that ground the testimony of the injured witness, P.W.-3, cannot be discarded.

12. The learned Trial Court after taking into consideration the testimony of the injured witness, if has passed the judgement of conviction, cannot be said to suffer from an error. Since, there is direct allegation of assault by the bullet, as such, it is not a case where the conclusion can be arrived that prima-facie case has been made out for suspension of sentence.

13. We have heard the learned counsel for the parties, perused the findings recorded by the learned Trial Court in the impugned judgement, as also the

testimony of the witnesses and other documents which have been exhibited in course of trial as available in the Lower Court Records.

14. It is evident from the testimony of P.W.-3, the injured victim, Shailendra Yadav, who is informant, wherein it has been deposed by him that when he was going to his home on his motorcycle from Poraiyahat Bazar and when he reached near Chamodih Ghati, five persons arrived on two motorcycles and stopped him and when he tried to flee away, Mahabir Turi and Bhawneshwar Yadav caught him and Dhiren Yadav, the appellant, fired a gun shot which caused injury on his back. He received fire arm injury on his life side of his back and fell down.

15. It has further been deposed that after the injured having fallen down Mahabir Turi told that “चलो साला खत्म हो गया” thereafter the victim was carried by P.W.-1, namely Adhiklal Mistri, on a motorcycle to Poraiyahat Hospital.

16. It appears from the cross-examination of the P.W.-3 that he has remained consistent what he had said in examination in chief. We therefore are of the view that the conviction since is based upon the testimony of the injured eye witness/victim P.W.-3; hence we do not find the case to be of suspension of sentence.

17. Accordingly, the instant Interlocutory Application being I.A. No. 6139 of 2023, stands rejected.

(Sujit Narayan Prasad, J.)

D.S./J.Minj

(Navneet Kumar, J.)