

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr. Appeal (DB) No.322 of 2020

1. Mahesh Prasad, aged about 32 years Son of Late Laliji Sao.

2. Sakunti Devi aged about 30 years Wife of Mahesh Prasad.

Both resident of Village-Sahpur, P.O. & P.S. Katkamsandi, Dist.-

Hazaribag

....

Appellants

Versus

The State of Jharkhand

....

Respondent

CORAM : HON'BLE MR. JUSTICE SUJIT NARAYAN PRASAD
HON'BLE MR. JUSTICE SANJAY PRASAD

For the Appellant

: Mr. P.P.N. Roy, Sr. Advocate

For the State

: Mr. Anup Pawan Topno, Advocate

11/Dated: 16.01.2025

I.A.No.1120 of 2024

Prayer

1. The instant interlocutory application has been filed on behalf of appellant no.2, namely, Sakunti Devi under Section 389(1) of the Cr.P.C. for suspension of sentence dated 31.01.2020, in connection with S.T. Case No.241 of 2015, arising out of Katkamsandi P.S. Case No.288 of 2013, corresponding to G.R. No.4285 of 2013, whereby and whereunder, the appellant has been convicted for the offence under Sections 304B & 302/34 of the IPC and Section 4 of the Dowry Prohibition Act and sentenced to undergo R.I. for life along with fine of Rs.10,000/- for the offence under Section 302 of the IPC and in default of payment of fine, she has further been sentenced to undergo imprisonment for four months. She has also been sentenced to undergo R.I. for life under Section 304B of the IPC, as also, R.I. for one

year along with fine of Rs.5,000/- under Section 4 of the Dowry Prohibition Act and in default of payment of fine, she has further been directed to undergo imprisonment for three months.

Prosecution Story

2. The prosecution case is based on the written report of informant Anil Kumar. The informant has alleged that marriage of his sister Sita Devi was solemnized with accused Munna Prasad, son of Lalji Sao on 11/07/13 and after the marriage, she was residing in her Sasural in village Sahpur under P.S. Katkamsandi, where on 04/12/13 his sister Sita Devi was murdered by her husband Munna Prasad, father-in-law Lalji Sao, Gotini Sakunti Devi, brother-in-law Mahesh Prasad, mother-in-law Gaura Devi and sister-In-law (nanad) Anju Kumari.

3. It has been alleged that on receiving the information of death of Sita Devi, the informant along with his other family members and some villagers reached at his sister's Sasural in Village Sahpur, where he found the dead body of his sister lying in a room, but no other inhabitants of the house were present in the house. The informant further alleged that his sister was being subjected to cruelty because of demand of dowry and therefore, he claimed that aggrieved by the non-fulfillment of demand of dowry, his sister's husband and in-laws killed his sister Sita Devi and fled away from the house leaving the dead body abandoned in the house.

4. In order to substantiate the prosecution case, prosecution has examined altogether twelve witnesses in Session Trial no. 241/15. The

learned trial court after appreciation of evidence has found the charges levelled against the present applicant along with other accused proved beyond reasonable doubt and accordingly the present applicant has been convicted for the offence under Sections 304B & 302/34 of the IPC and Section 4 of the Dowry Prohibition Act and accordingly sentenced as aforesaid.

5. The instant interlocutory application has been preferred by the appellant, namely, Sakunti Devi with the prayer for the suspension of sentence during pendency of the instant appeal.

Submission of the Learned counsel for the applicant

6. It has been contended by the learned senior counsel for the appellant that it is a case where the prosecution has miserably failed to establish the charge beyond all reasonable doubts.

7. It has been submitted that the prosecution witnesses have given contradictory statements with regard to exact article demand by the appellant.

8. It has also been submitted that the ingredients of Section 304B IPC has not been proved by the prosecution.

9. It has further been submitted that taking into consideration the testimonies of the witnesses, it appears that there is no unanimity relating to demand of dowry by the accused person from the deceased or from her family members, therefore, it is not sufficient to establish the ingredient of Section 304B of the IPC.

10. The present appellant being the sister-in-law of the deceased

has been falsely implicated in the case, since, she is separate in home and kitchen from the other convict husband of the deceased. In order to fortify this argument the learned counsel has placed reliance upon the statement of informant at Para-4 of his cross-examination, where it is stated that though the husband and the rest accused stay in the same home but the appellant along with her husband were having separate kitchen.

11. The learned counsel for the appellant has contended that the other co-accused/appellant Munna Prasad who is the husband of the deceased has already been enlarged on bail vide order dated 12.07.2023 passed in I.A. No. 1781 of 2023 in Criminal Appeal (DB) No. 313 of 2020, therefore the present appellant deserve to be enlarged on bail after suspension of sentence during pendency of the instant appeal.

12. Learned Senior Counsel, based upon the aforesaid grounds has submitted that it is a fit case for suspension of sentence.

Submission of the learned counsel for the respondent-State

13. While on the other hand, Mr. Anup Pawan Topno, learned APP appearing for the respondent-State has vehemently opposed the prayer for suspension of sentence.

14. He submits that the marriage took place on 11th July, 2013 and as per the prosecution evidence, death of the victim took place by strangulation on 4th December, 2013 i.e., within six months of the marriage on non-fulfilment of demand of dowry.

15. It has further been submitted that father of the co-convict husband has stated before the informant that the husband and Gotni, Sakunti Devi (applicant herein) had killed the victim. It has been contended that in the deposition of the informant, it has also come that the father-in-law of the deceased admitted that his son, Munna Prasad, husband of the deceased and his daughter-in-law, Sakunti Devi were having illicit relationship.

16. It has further been contended that the post-mortem report of deceased (Ext.-3) also shows that death was caused by Asphyxia due to strangulation showing the involvement of more than one person.

17. He submits that earlier the similar prayer of the present applicant/appellant for suspension of sentence during pendency of the appeal was rejected three times by the coordinate Bench of this Court on merits after due consideration of the materials available on record therefore, no fresh grounds have been made out for grant of bail by suspension of sentence during pendency of the instant appeal.

18. It has been contended that it is incorrect on the part of the appellant to take the ground that none of the prosecution witnesses has supported the prosecution version, rather, if the testimony of the prosecution witnesses will be taken into consideration together, then, it would be evident that the prosecution has been able to prove the charge beyond all reasonable doubts and as such, it is not a case for suspension of sentence.

Analysis

19. We have heard the learned counsel for the parties and gone across the finding recorded by the learned trial court in the impugned judgment as also the testimony of the witnesses along with other exhibits, as available in the Lower Court Records.

20. At the outset, it needs to refer herein that this is the fourth attempt of the applicant/appellant namely Sakunti Devi for suspension of sentence during pendency of the instant appeal by filing the instant application.

21. It is evident from the record that earlier, the similar prayer of the present applicant/appellant for suspension of sentence during pendency of the appeal was rejected three times by the coordinate Bench of this Court vide order dated 23.06.2021, 16.09.2022 and 07.11.2023 passed in I.A. No. 1954 of 2021, I.A. No. 3879 of 2022 and I.A. No. 5852 of 2023 respectively, on merits after due consideration of the materials available on record. For ready reference the relevant paragraph of the aforesaid orders is being quoted as under:

Order dated 23.06.2021 passed in I.A. No. 1954 of 2021

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We have considered the submission of learned counsel for the parties and taken into note of the relevant materials relied upon by them from Lower Court Records. It appears that Lalji Sao, father of appellant no. 1 admitted that his son and husband of the deceased along with appellant no. 2, Sakunti Devi were having illicit relationship and had killed the victim. However, there are only general and omnibus allegation against the appellant no. 1.

Order dated 16.09.2022 passed in I.A. No. 3879 of 2022

4. Having considered the submission of learned counsel for the parties, the grounds urged in support of the renewed prayer for suspension of sentence and the period of custody also claimed by the appellant No. 2, we do not find any fresh grounds made out for suspending the sentence in favour of appellant No. 2, as the prayer has earlier been rejected on merits after due consideration of the materials on lower court records and the period of custody is also about 3 years only.

5. Accordingly, I.A. No. 3879 of 2022 is rejected at this stage.

Order dated 07.11.2023 passed in I.A. No. I.A. No.5852 of 2023

7. In our opinion the reliance placed by the learned counsel for the applicant on the order passed by a co-ordinate Bench of this Court in I.A. No. 1781 of 2023 in Criminal Appeal (DB) No. 313 of 2020 is completely misplaced inasmuch as only on the ground that Munna Prasad has served about 10 years of imprisonment he has been released on bail. Whereas, the present applicant has remained in custody for only about 3 years.

8. Having regard to the specific findings recorded by the Sessions Judge and the observations of PW 12 in the post-mortem report, we are not inclined to entertain the present application for suspension of sentence vide I.A. No. 5852 of 2023 which is accordingly dismissed.”

22. It is evident from the aforesaid orders that the Co-ordinate Bench has taken note of the medical evidence particularly post-mortem report of the deceased wherein it has been mentioned that “A ligature mark directed horizontally and encircling the neck completely below the level of thyroid cartilage brownish in colour and with irregular abrasion

mark present around the ligature mark. Head and neck:- Ecchymosis present in the subcutaneous tissue in line of the ligature mark.”

23. The Co-ordinate Bench has further taken note of the fact that Lalji Sao, father of convict son (husband of deceased) had admitted that his son and along with appellant namely Sakunti Devi were having illicit relationship and had killed the victim.

24. Thus, from perusal of the aforesaid orders it is evident that the Co-ordinate Bench of this Court while adjudicating the issue of suspension of sentence of the applicant/appellant has taken in to consideration the material available on record and had meticulously examined the evidence and thereafter passed the well merited orders.

25. The learned counsel for the appellant has contended that the other co-accused/appellant Munna Prasad who is the husband of the deceased has already been enlarged on bail vide order dated 12.07.2023 passed in I.A. No. 1781 of 2023 in Criminal Appeal (DB) No. 313 of 2020, therefore the present appellant deserve to be enlarged on bail after suspension of sentence during pendency of the instant appeal.

26. In our opinion the reliance placed by the learned counsel for the applicant on the order passed by a co-ordinate Bench of this Court in I.A. No. 1781 of 2023 in Criminal Appeal (DB) No. 313 of 2020 is not tenable reason being that the aforesaid contention of the learned counsel for the appellant has already been taken note by the Co-ordinate Bench while rejecting the prayer for the suspension of the

sentence by the appellant which would be evident from the order dated 7th November 2023 passed in I.A. No. 5852 of 2023. The relevant part of the order dated 7th November 2023 has already been quoted and referred hereinabove in the preceding paragraph.

27. Thus, from the aforesaid discussion it is evident that no fresh grounds have been made out by the applicant/appellant for grant of bail by suspension of sentence during pendency of the instant appeal. Further this Court are conscious with the fact that this Court can not act like the appellate Court for the orders passed by the Co-ordinate Bench and as we discussed herein above that earlier the prayer of suspension of sentence has been rejected thrice by the Co-ordinate Bench after taking in to consideration the material available on record and had meticulously examined all the evidences available and thereafter passed the well merited orders.

28. Thus, on the basis of the discussion made hereinabove this Court is of the considered view that since, the prayer of suspension of sentence of the appellant has been rejected thrice by the Co-ordinate Bench after meticulous examination of all the evidences available on merit , and further, no new ground is available on record for fresh consideration, the instant application lacks merit, therefore it is not a fit case for suspension of sentence.

29. Accordingly, the interlocutory application being I.A. No.1120 of 2024 stands dismissed.

30. It is made clear that any observation made herein will not

prejudice the issue on merit as the appeal is lying pending for its consideration.

(Sujit Narayan Prasad, J.)

(Sanjay Prasad, J.)

Rohit/-