

IN THE HIGH COURT OF JHARKHAND AT RANCHI

Cr. Appeal (DB) No. 298 of 2019

1. Ram Singh Banara

2. Mangu Banara

..... Appellants

Versus

The State of Jharkhand

..... Respondent

CORAM: HON'BLE MR. JUSTICE SUJIT NARAYAN PRASAD

HON'BLE MR. JUSTICE ARUN KUMAR RAI

For the Appellants : Mr. Shiv Prasad Singh, Advocate

For the Respondent : Mr. Azeemuddin, APP

Order No.05/ Dated: 20.03.2024

I.A. No. 2679 of 2024

The instant interlocutory application has been filed under Section 389 (1) of the Code of Criminal Procedure, 1973 on behalf of the appellant Mangu Banra who is appellant No.2 prays for the suspension of sentence and to release him on bail during the pendency of the instant criminal appeal, whereby and whereunder he has been convicted and sentenced under Section 302 read with section 34 and Section 324 r/w 34 of the Indian Penal Code.

2. It has been contended on behalf of the appellants in the instant case where the prosecution has failed to substantiate to prove all shadow of reasonable doubt. It has been contended that there is wide contradictions in the testimony of the witnesses.

Further, ground has been taken that even the weapon which has been used in commission of crime i.e. *Kattari* having the blood stain has not been sent for forensic test before the Forensic Science Laboratory. Hence, it cannot be said that the prosecution has been able to prove the said charges beyond all shadow of reasonable doubt. The submission has also been made that merely on the basis of the testimony of P.W. 7 which has not been corroborated by the other testimony. Hence, it is a fit case where the sentence is fit to be suspended.

3. While on the other hand Mr. Azeemuddin, learned APP appearing for the State has opposed the prayer for bail. The ground has been taken that it is incorrect on the part of the appellant that the prosecution has failed to substantiate the charge. It appears that P.W. 7 who happens to be wife of the deceased was in the house and she had witness the commission of crime while committing murder by these two appellants, one of the appellant-Mangu Banara, is her own relative.

4. It has been contended that it is a case of prosecution that is based upon

the testimony of the eye witness and it is a settled proposition of law that if the conviction is based upon the testimony of eye witness, even if the weapon has not been sent for the forensic examination that will not be fatal to the prosecution.

5. The learned APP appearing for the State based upon the aforesaid ground has submitted that it is not a case where the sentence is fit to be suspended.

6. This Court heard learned counsel for the parties, gone across the finding given by the learned trial court in the impugned judgment, the testimony available in the trial court record along with the other documents.

7. This Court after appreciating the rival submissions has gone through the testimony of P.W. 7 where it is evident that P.W. 7 has consistently supported the prosecution version of commission of murder of her husband while she was inside the house and in front of her, both these appellants have assaulted and killed her husband.

8. This Court is of the view that since the judgment is based upon the testimony of P.W.7 and she remained consistent even in the cross examination, hence, this Court is of the view that this is not a case for suspension of sentence.

9. Accordingly, the instant interlocutory application stands dismissed.

(Sujit Narayan Prasad, J.)

(Arun Kumar Rai, J.)