

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Criminal Appeal (S.J.) No. 485 of 2024
With
I.A. No. 11927 of 2025

Azhar Imam

..... Appellant

Versus

1.The State of Jharkhand

2.Rahul Singh

..... Respondents

CORAM: HON'BLE MR. JUSTICE SANJAY PRASAD

For the Appellant : Mr. J.N. Upadhyay, Advocate

For the State : Mr. Pankaj Kumar, P.P.

ORAL ORDER IN COURT

15/12.01.2026 Heard Mr. J.N. Upadhyay, learned counsel for the appellant and Mr. Pankaj Kumar, learned Public Prosecutor on behalf of the State.

2. This Criminal Appeal has been filed on behalf of the Appellant challenging the judgment of conviction dated 24.06.2024 and sentence dated 29.06.2024, passed by Mr. Nishant Kumar, learned Additional Sessions Judge-III, East Singhbhum, Jamshedpur in S.T. Case No. 419 of 2016, arising out of Sonari P.S. Case No. 174 of 2016, corresponding to G.R. Case No. 2418 of 2016, by which the Appellant-Azhar Imam has been convicted for the offences under Sections 393/34 and 304 Part (II)/34 of Indian Penal Code and sentenced to undergo R.I. for a period of Eight (08) years and to pay the fine of Rs. 15,000/- and R.I. for a period of Five (05) years and to pay the fine of Rs.5,000/-.

3. The prosecution case, in brief, is that while the Informant-Rahul Singh, along with his wife and Nine (09) months old child were returning from his in-laws' house at Mango on 12.08.2016 and as soon as they

reached Marine Drive and crossed one motorcycle CD Deluxe without having any registration number, his wife informed him that both the rider of CD Deluxe were trying to rob the truck driver, whereafter he protested and prevented the robbery. Then he started his journey on Motorcycle and as soon as went 100 meters away from the place of robbery, both bike riders tried to stop him, but the informant kept running his bike. In the meantime, the miscreants overtook him and tried to commit robbery after pointing a pistol upon him. His wife tried to save him, but the driver caught his wife by her neck and thrashed her on the divider and kicked her on the chest. The Informant caught hold of the driver, but another succeeded in fleeing away and the person, whom he caught hold of, disclosed his name as Azhar Imam. The informant after handing over the apprehended accused to passerby, took his wife to TMH with the help of a Car Driver, where she succumbed to her injuries, during course of treatment.

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4. This Interlocutory Application has been filed on behalf of the appellant for suspension of sentence and grant of bail.

5. It is submitted by learned counsel for the appellant that the impugned judgment and sentence passed by the learned Court below is illegal and not sustainable in law. It is submitted that the learned Court below has wrongly convicted the appellant under Sections 393/34, 304 Part (II)/34 of Indian Penal Code as it is a case of road accident and the appellant was arrested on mere suspicion and the appellant was himself injured, which has come in the F.I.R. and during the

evidence. It is submitted that although the F.I.R. was lodged on 12.08.2016, but the appellant was arrested on 13.08.2016 from the M.G.M. Hospital, Jamshedpur by the Police. It is submitted that except the Informant there is no eye witness of the occurrence. It is submitted that the P.W.1, namely Vibhakar Kumar is the Doctor, who had conducted post-mortem examination of the deceased and he is a formal witness. It is submitted that P.W.2 and P.W.3, namely Gopal Kumar and Dipendra Kumar respectively are hearsay witnesses and they had taken the deceased Rinku Devi to the Hospital. It is submitted P.W.4 and P.W.5, namely Amit Kumar Singh and Bharat Singh respectively are the relatives of the Informant and they are also hearsay and interested witnesses and they have not seen the occurrence. It is submitted that P.W.7 is Budhram Oraon, who is the Investigating Officer of this case and who has also not conducted the investigation properly. P.W.8, namely Sachita Devi is the mother of the Informant, who has also been declared hostile and she has also not supported the prosecution case. It is submitted that the appellant was in custody from 13.08.2016 to 23.03.2017, i.e. for around Seven (07) months during trial and from 04.06.2024 till date and thus, the appellant has remained in custody for Two (02) years and around One (01) month, hence, the appellant may be enlarged on bail.

6. On the other hand, learned Public Prosecutor has opposed the prayer for bail. It is submitted that the impugned judgment of conviction and sentence passed by the learned Court below is fit and proper and no interference is required from this Court. It is submitted that the appellant is named in the F.I.R. for

attempting to commit robbery upon the Informant with one co-accused, namely Asif Khan, who had fled away. It is submitted that due to the act of the appellant along with said Asif Khan, the wife of the Informant (Rinku Devi) had died. It is submitted that it is evident from the F.I.R. that the appellant, namely Azhar Imam had thrashed the wife of the Informant upon the divider of the road and due to which she had suffered head injuries and blood started oozing out from her head and as a result she had died in the hospital during treatment. It is submitted that the P.W.6, namely Rahul Kumar Singh is the informant of this case and he has fully supported the case that the appellant along with one Asif Khan has tried to rob the Informant, but when wife of the Informant intervened, she was thrashed upon the divider by the appellant due to which she sustained head injuries as a result of which she died. It is submitted that the P.W.1, namely Vibhakar Kumar is the Doctor, who conducted Post Mortem examination of the deceased wife of the Informant and stated that cause of death was head injury. It is submitted that the P.W.7-Budhram Oraon is the Investigating Officer of this case, who had conducted investigation of the case and has submitted chargesheet against the appellant under Sections 393, 302/34 of I.P.C. and has supported and corroborated the prosecution case and hence, the prayer for bail made on behalf of the appellant may be rejected.

7. Perused the Trial Court Record and considered the submissions of both sides.

8. It transpires from the F.I.R. that on 12.08.2016, at around 3.20 p.m. the appellant along with one Md. Asif had attempted to commit robbery while the

Informant along with his deceased wife, namely Rinku Devi and minor daughter, were going for his house at Sonari from Mango.

9. It also reveals from the F.I.R. that the appellant, namely Azhar Imam had caught hold of the neck of the wife of the Informant and thrashed her head at the divider of the road and due to which the wife of the Informant sustained head injuries and due to which she died.

10. It transpires that the P.W.2 and P.W.3, namely Gopal Kumar and Dipendra Kumar respectively were the Driver and Owner of the Car by which the wife of the Informant was taken to the T.M.H. Hospital and they got her admitted there.

During cross-examination they had stated that they had not seen the occurrence, which is natural as by that time, the occurrence had already taken place.

11. It appears that P.W.4 is one Amit Kumar Singh, who has also supported the prosecution case that his brother-in-law and sister and their daughter were returning from the house of said Amit Kumar Singh and when they reached near the house of the Informant at Sonari, then two persons stopped their bike by making scissor and tried to snatch their money and one of them started quarrelling with his brother-in-law and when his sister tried to intervene, then one of the miscreants caught the neck of deceased Rinku Devi and thrashed her to the divider and kicked on her chest. The miscreant, i.e. the appellant was caught by his brother-in-law Rahul Singh and other miscreant, namely Md. Asif had fled away. Thereafter, his sister was admitted to

T.M.H. where she died. Even during cross-examination he admitted that he was present at Mango on the date of occurrence and he identified the appellant as the miscreant his brother-in-law has caught hold of.

12. P.W.5 is the father of the Informant, who has simply supported the prosecution case and who is a formal witness.

13. P.W.6 is the Informant, namely Rahul Kumar Singh, who has stated during his evidence that while he was returning with his wife and daughter, then two persons, i.e. appellant-Azhar Imam and Md. Asif took his motorcycle and started looting them and when his wife tried to intervene, then one of the miscreants caught hold of the neck of his wife and thrashed her at the divider due to which the head of the wife of the Informant was severely injured and profused bleeding started and the child also fell down. However, he caught one of the miscreants, while the other fled away. In the meantime, nearby people assembled there and he caught the miscreant-appellant, who divulged his name as Azhar Imam and the miscreant, who fled away, was Md. Asif. Then, the apprehended miscreant was caught by the people and handed over to the Police and thereafter, his wife was taken to the Tata Main Hospital, where she died during course of treatment.

14. Even during cross-examination he stated that his wife was thrashed against the divider due to which she became unconscious and he had caught one person.

Thus, the Informant has fully supported his case.

15. P.W.7, namely Budhram Oraon, is the Investigating Officer of this case, who had conducted investigation of the case and supported the prosecution case.

16. In criminal trial, quality of evidence of witnesses matters and not the number of witnesses and even sole testimony of a single witness is sufficient to convict a person.

17. In this case the Informant is the eye-witness of the occurrence and his wife died due to sustaining head injuries as she was thrashed by the appellant at the divider of the road when she tried to save her husband, while the appellant and other accused were trying to commit robbery with him.

18. It transpires from Para 71 of the Case Diary that this appellant has criminal antecedent and was involved in Bodam P.S. Case No.33 of 2013 instituted for the offence under Sections 394/411 of I.P.C., though the same has not been incorporated in the impugned judgment.

19. This Court does not appreciate the conduct of the learned Trial Court for convicting the appellant under Section 304 Part II instead of under Section 302 I.P.C. or under Section 304 Part I.

20. The Doctor, i.e. P.W.1, namely Vibhakar Kumar, who conducted post mortem upon the deceased Rinku Devi, has found following injuries on the person of the deceased Rina Devi, which are as follows:-

“External Injury:-

Abrasion:

1. 2 c.m. X 1 c.m. over left wrist back,

2. 4 c.m. X 0.1 cm over left lower lip,

3. 2 c.m. X 0.5 c.m. over mid scart region,

4. 5 c.m. X 4 c.m. over right side chest back and
Lacerated wound : 5 c.m. X 1 c.m. X BD over occipital region
of scalp

Internal -Occipital region of scar continued bit crack fracture 6
c.m. in length with 0.25 c.m. small crack fracture, sub dural
blood and blood clot present over both sides of brain. Internal
organs conjusted. Liver fond contused just below the postial
surface of lower ribs (patter contusion)

Opinion- above noted injuries are antemortem in nature caused
by hard and blunt object. D. death was due to head injury. 3.
Time elapse since death approx. 18-24 hrs. from the time of P.M.
examination.”

21. In view of the above, this Court is not inclined to grant bail to the appellant and accordingly, prayer for bail made on behalf of the appellant is, hereby, rejected.

Thus, I.A. No. 11927 of 2025 is rejected.

22. It transpires that this is not only a case of attempt to commit robbery by the accused persons, but this is also a case of committing culpable homicide amounting to murder under the provisions of Section 300 of I.P.C. and the appellant had kicked upon the chest of the wife of the Informant and caught her neck and had thrashed the head of the deceased Rinku Devi on the divider of the road as a result of which she died, however, the learned Court below has taken lenient view by convicting the appellant for the offence under Section 304-II I.P.C only for a period of Eight (08) years which appears to be on a very lower side Therefore, the punishment under Section 304 Part (II) for a period of Eight (08) years appears to be insufficient.

23. It has also came in the F.I.R. that another co-accused had tried to rob one of the Truck Drivers and thereafter, when the Informant tried to save the said

Truck Driver, then the Appellant and his associate Asif tried to rob him and started assaulting him which compelled his wife, who had their nine month old daughter in her lap, to save him, but the appellant thrashed her head on the divider of the road, which appears to be a deliberate offence and not without premeditation and intension as they were having intention to commit robbery and commit crime.

24. This Court is aware of the judgment of Hon'ble the Supreme Court that sentence of the judgment may not be enhanced unless the State has preferred an appeal, however, the High Court is not powerless in exercise of power conferred upon the appellate Court under the proviso to Section 386 Cr.P.C. which is equivalent to Section 422 of B.N.S.S.

25. It has been recently held by the Hon'ble Supreme Court that the High Court suo-motu cannot enhance the sentence in the appeal filed by the accused-appellant.

26. However, previous judgments of Hon'ble Supreme Court have also been referred i.e. of ***Nadir Khan Vs. The State (Delhi Administration) reported in (1975) 2 SCC 406*** and in the case of ***Eknath Shankarrao Mukkavar Vs. State of Maharashtra*** reported in **(1977) 3 SCC 25**.

27. It has been held by the Hon'ble Supreme Court in ***Nadir Khan Vs. The State (Delhi Administration)*** reported in **(1975) 2 SCC 406** at **Para 3 and 5** as follows:-

“Para 3:- The question raised by the learned Counsel in this application is, that the High Court, in revision under Section 401 Cr.P.C., has no jurisdiction or power to enhance the sentence in

the absence of an appeal against the inadequacy of sentence under Section 377.

Para 5:- *Section 401 expressly preserves the power of the High Court, by itself, to call for the records without the intervention of another agency and has kept alive the ancient exercise of power when something extraordinary comes to the knowledge of the High Court. The provisions under Section 401 read with Section 386 (c) (iii) Cr.P.C. are clearly supplemental to those under Section 377 whereby appeals are provided for against inadequacy of sentence at the instance of the State Government or Central Government, as the case may be. There is therefore absolutely no merit in the contention of the learned Counsel that the High Court acted without jurisdiction in exercising the power of revision suo motu, for enhancement of the sentence in this case. The application stands rejected.”*

28. Judgment passed in ***Ek Nath Shankarrao Mukkawar Vs. State of Maharashtra*** reported in **(1977) 3 SCC 25** also relates to suo-motu power of the High Court for enhancement of sentence and it has been held by the Three Hon’ble Judges Bench of the Hon’ble Supreme Court that provision of appeal against inadequacy of sentence does not take away from the High Courts the power to enhance the sentence suo-motu in exercise of revisional powers. It has been held at Paragraph 23 of the aforesaid judgment as follows:-

Para 23:- As seen earlier, the Prevention of Food Adulteration Act provides that when conviction is under Section 16 (1) (a) (i) for selling an adulterated article coming within the definition of Section 2 (i) (1), the Magistrate, by recording adequate and special reasons, has jurisdiction to award a sentence less than the minimum. In an appeal under Section 377, Cr.P.C. the High Court may

interfere with the sentence if no reasons for awarding a lesser sentence are recorded by the Magistrate. Again if the reasons recorded by the Magistrate are irrelevant, extraneous, without materials and grossly inadequate, the High Court will be justified in enhancing the sentence.”

29. This Court is further of the view that if the High Court is restrained from exercising its suo-motu revisional power then the High Court will be playing in the hands of Trial Court and the High Court will be left to decide only the sentence imposed by the Trial Court even if the Trial Court has committed grave illegality and gross irregularity and has acted against the interest of the society. Therefore, the High Court may not be restrained in exercising its suo-motu revisional power in an appropriate case where the judgment and sentence passed by the Trial Court has occasioned a failure of justice.

30. The High Court cannot remain a mute spectator and let the things go even after grave illegality is committed by learned Trial Court by imposing sentence of RI for five (08) years for the offence u/s 304 Part-II I.P.C instead of severe punishment. As such, the High Court cannot allow the learned Trial Court to commit illegality. Had the Trial Court sentenced the appellant to 10 years and above then this Court could not have issued notice to the appellant for enhancement of sentence.

However, the enhancement of sentence shall be considered and decided at the time of final argument/hearing of this criminal appeal as the appellant is in custody.

31. If the State Authorities or the District Authorities remains negligent or have shown no interest in filing the appeal, then the High Court cannot keep sitting with its hands tied as it will amount to encouraging the Officer for granting lesser punishments instead of deterrent punishments. The power conferred under Section 386 of Cr.P.C., now Section 427 of B.N.S.S. can be exercised by the High Court of enhancing the sentence in case of inadequacy of sentence passed by the Trial Court.

32. In the present case, the judgment of conviction and sentence was passed on 24.06.2024 and 29.06.2024 respectively for the offence under Section 393/34 and 304 Part (II)/34 of Indian Penal Code. The instant Criminal Appeal has been filed under Section 415(2) of B.N.S.S. Therefore, the then District Administration and Senior Superintendent of Police, Jamshedpur remained mute spectator in not looking into the sentence imposed upon the appellant by the learned Trial Court or there is another possibility that they may not be served with the copy of the impugned judgment and sentence passed by the learned Trial Court.

33. It also appears from the records that earlier the prayer for bail of the appellant was not pressed on 22.10.2024 and I.A. No. 250 of 2024 was dismissed as not pressed before the Co-ordinate Bench (Hon'ble Mr. Justice Sanjay Kumar Dwivedi) of this Court.

34. Therefore, the High Court cannot ignore the fact that if the Trial Court has committed serious error causing injustice to the Informant and the victim, then the same needs to be looked into, otherwise the Trial

Court may be emboldened to commit such mistakes in future and creating precedence of passing lesser sentences in case of graver offences which may cause chaos in the society.

35. The Trial Court must remain cautious in future while deciding the conviction during trial as taking casual approach in such a ghastly act by the accused person and in which a family has been ruined, however, the Court has shown leniency.

36. It further transpires that though the wife of Informant has died, but the Court below, while passing the order of compensation, appears to have obliged the Informant by paying him only Rs.35,000/- by way of compensation, which is not appreciated by this Court at all.

37. The learned Trial Court must have awarded sufficient compensation to the Informant of Rs.5,00,000/- to Rs.7,00,000/- as the informant has lost his wife and even a child has lost her mother.

38. It is well settled from the judgment of the Hon'ble Supreme Court of India that the Criminal Appeal is in continuation of trial and this has also been observed in the case of **Deepak Rai v. State of Bihar** reported in **(2013) 10 SCC 421** by the Hon'ble Supreme Court.

39. Under the circumstances, this Court directs the Deputy Commissioner, Jamshedpur and Senior Superintendent of Police, Jamshedpur to grant compensation of Rs.5,00,000/- for the present to the Informant within a period of Three (03) months from the date of receipt of this order.

The State Authorities and District Authorities are directed to pay a sum of Rs.5,00,000/-

(Rupees Five lacs) to the Informant, i.e. the Husband of the deceased-Rinku Devi and out of the said amount, a sum of Rs. 2,50,000/- may be deposited by way of fixed deposit in the name of minor daughter of the Informant, which shall be handed over to her on attaining the age of majority.

40. The Member Secretary, JHALSA, Principal District & Sessions Judge, Jamshedpur and Secretary, D.L.S.A., Jamshedpur are directed to co-ordinate with the Deputy Commissioner and Senior Superintendent of Police, Jamshedpur with regard to payment of compensation.

41. This Court, in exercise of power conferred under Section 386 Cr.P.C. is constrained to issue show cause notice upon the appellant for enhancement of his sentence as it appears from perusal of Trial Court Record that due to the attempted robbery by the appellant and his friend upon the Informant and his family, who were living a happy married life, their life has been spoiled as wife of the Informant has died due to the nefarious act of the appellant and the co-accused.

42. The Registry is directed to issue show-cause Notice to the appellant for enhancement of his sentence.

43. Let a copy of this order be sent to the Member Secretary, JHALSA, Principal District & Sessions Judge, Jamshedpur, Secretary, D.L.S.A., Jamshedpur, learned Trial Court below, the Deputy Commissioner and Senior Superintendent of Police, Jamshedpur for the needful.

(Sanjay Prasad, J.)

s.m.
Dated 12.01.2026