

IN THE HIGH COURT OF JHARKHAND AT RANCHI

Cr. Appeal (DB) No. 1112 of 2012

Nandu Baitha Appellant

Versus

The State of Jharkhand Respondent

CORAM: HON'BLE MR. JUSTICE D. N. PATEL
HON'BLE MR. JUSTICE S. CHANDRASHEKHAR

For the Appellant: Mr. Pravin Kumar
For the Respondent: Mr. S.S. Prasad, A.P.P.

04/Dated: February, 06, 2013

Per D.N. Patel, J

- 1) This appeal has already been admitted by this Court by order dated 15.01.2013. Record and proceeding of the Sessions Trial No.37 of 2010/42 of 2010 was called for from the trial Court to appreciate the argument for suspension of sentence awarded to the appellant-accused.
- 2) Records and proceeding of the trial Court has been received by this Court.
- 3) The present appellant is an original accused No.3 in the Sessions Trial. He is mainly punished for the offence of murder of Rambilash Yadav punishable under Section 302 of the Indian Penal Code.
- 4) We have heard learned counsel for both sides on the prayer for the suspension of sentence under Section 389 of the Code of Criminal Procedure. We have also perused the record and proceeding of Sessions Trial No. 37 of 2010/42 of 2010.
- 5) Having heard learned counsel for both the sides and looking to the evidence on record, it appears that the incident has taken place on 2nd August, 2009 at about 8.30 p.m. and on the same day at about 11.00 a.m., the F.I.R. has been lodged wherein this appellant was named in the F.I.R. The case of the prosecution is based upon more than one eyewitnesses who are PW.1, PW.2 and PW.3. They have clearly narrated the role played by this appellant. This appellant had caught hold of deceased and thus, he facilitated the another co-accused to give the fatal blow. Vital role has been played by this appellant. Had he not been there, deceased would have been in a position to run away. As the Criminal Appeal is pending, we are not much analyzing the evidences on record but suffice it will be to say

that looking to the depositions given by the eyewitnesses, there is prima facie case against the appellant-accused. Moreover, deposition of these three eyewitnesses is also getting further corroboration by the medical evidence given by PW.5 – Dr. Aman Kumar.

6) In view of these evidences on record and looking to its corroboration given by the medical evidence, as a cumulative effect of these evidences, there is prima facie case against the accused-appellant. Moreover, looking to the gravity of the offence and quantum of punishment and also looking to the manner in which the appellant is involved in the offence of murder of the deceased, we are not inclined to suspend the sentence awarded to the appellant-accused, namely Nandu Baitha, during pendency of this criminal appeal. Thus, there is no substance in the prayer of suspension of sentence and the same is hereby dismissed.

(D. N. Patel, J)

Manoj/cp.2

(S. Chandrashekhar, J)