

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr. Appeal (DB) No. 664 of 2018

Rasik Manjhi --- --- Appellant
Versus
The State of Jharkhand --- --- Respondent

CORAM: Hon'ble Mr. Justice Aparesh Kumar Singh
Hon'ble Mrs. Justice Anubha Rawat Choudhary
Through: Video Conferencing

For the Appellant : Mr. Kalyan Roy, Advocate
For the State : Mrs. Vandana Bharti, A.P.P

07/08.09.2021 Heard learned counsel for the appellant Mr. Kalyan Roy and learned counsel for the State Mrs. Vandana Bharti on the prayer for suspension of sentence made by this appellant through I.A. No.4060 of 2021.

2. The sole appellant stands convicted for the offences punishable under Sections 302/34, 201/34, 307/34, 325/34 and 323/34 of the I.P.C. by the impugned judgment of conviction dated 19.01.2018 passed in S.T. No.21/1995 by the court of learned Additional Sessions Judge-II, Special Fast Track Court (Crime Against Women), Bermo at Tenughat and has been sentenced vide the impugned order of sentence dated 25.01.2018 as under:

- I. Under Section 302/34, I.P.C.- to undergo rigorous imprisonment for life with a fine of Rs.5,000/- and a default sentence;
- II. Under Section 201/34, I.P.C.- to undergo rigorous imprisonment for 4 years with a fine of Rs.3,000/- and a default sentence;
- III. Under Section 307/34, I.P.C.- to undergo rigorous imprisonment for 7 years with a fine of Rs.4,000/- and a default sentence;
- IV. Under Section 323/34, I.P.C.- to undergo rigorous imprisonment for 6 months;
- V. Under Section 325/34, I.P.C.- to undergo rigorous imprisonment for 4 years with a fine of Rs.3,000/- and a default sentence.

3. Learned counsel for the appellant submits that in this case original copy of the F.I.R. was not traceable at the time of trial as is obvious from reading of the impugned judgment itself. The allegation made in the F.I.R. lodged on the Fardbeyan of the informant wife P.W.4 has been dented by her own statement made during trial at paragraph-20 where she has stated that when Dhaneshwar Manjhi P.W.1 came to her residence on the next day, she had informed him that two thieves had come in the night and had badly

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beaten her husband i.e. the deceased. It is submitted that P.W.5 the 12 year's old son of the deceased has, in his deposition, stated that in the night itself he and his younger brother had gone to the house of Radho Manjhi (P.W.7) and informed him about the occurrence. He also stated at para-9 that when Dhaneshwar Manjhi (P.W.1) came to their residence in the morning, his mother was unconscious and not in a position to talk. She was unconscious till the Police came in the evening and took her. P.W.7 has stated that when P.W.5 came to his house at around 11.00-12.00 P.M. in the night, he only informed about the assault made on his mother which had broken her hand. He did not inform anything about his father and that he had gone to the house of the informant in the night itself where he did not find Tirpan Manjhi the deceased. It is submitted that the Doctor who examined the informant, has not stated about any fracture of the arm of the informant and that the injuries were caused by hard and blunt substance by Lathi. The dead body was recovered after 5 days as per the case of the prosecution in a badly decomposed state. The investigating officer has not been examined which is a vital lacuna in the entire prosecution case. The Fardbeyan has also not been proved. It is submitted that the appellant was in custody since 27th September 2014 till 1st May 2018 during trial and thereafter since his conviction on 23rd January 2018 i.e. about 7 years and 2 months. Appellant has been falsely implicated as he was the Dewar of the informant and allegedly about 5 years back the son of the appellant had died for which he suspected the appellant to have practiced witchcraft. He submits that the whole story of practice of witchcraft by the deceased made by the informant has not been supported during trial by her. Learned counsel for the appellant submits that as per the case of the informant also, there is no house in 1 - 2 Kms. vicinity from their house. Therefore, the appellant may be enlarged on bail by suspending the sentence.

4. Learned A.P.P. has opposed the prayer. She submits that the prosecution witness no.1 Dhaneshwar Manjhi has stated that the blood stained axe, shirt, half pant and shoe were seized from the house of the accused. An axe was also seized from the house of the deceased. P.W.1 has also stated that he heard about the incidence in the morning from the informant. Learned A.P.P. therefore submits that the incriminating material recovered from the house of the accused is sufficient for the purposes of denying the privilege of suspension of sentence at this stage.

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5. We have considered the submissions of learned counsel for the parties and taken note of the materials relied upon by them from the lower court records and also the period of custody undergone by the appellant.

6. On consideration of the materials on record including the statement made by the informant at para-20 of her deposition, the statement of P.W.5 12 years' old son of the deceased, the statement of P.W.7 to the effect that P.W.5 had come at night and informed of the assault only upon his mother and not about the assault upon the deceased and also the period of custody undergone by the appellant for more than 7 years by now, we are inclined to grant the privilege of suspension of sentence to the appellant during pendency of the appeal. Appellant is directed to be released on bail on furnishing bail bonds of Rs. 10,000/- (rupees ten thousand) with two sureties of the like amount, each, to the satisfaction of learned Additional Sessions Judge-II, Special Fast Track Court (Crime Against Women), Bermo at Tenughat in connection with S.T. No.21/1995 with the condition that the appellant as well as his bailors shall not change their addresses and mobile numbers, if any, without prior permission of the learned trial court. I.A. No.4060 of 2021 stands disposed of.

(Aparesh Kumar Singh, J)

(Anubha Rawat Choudhary, J)

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