

IN THE HIGH COURT OF JHARKHAND AT RANCHI

Cr. Appeal (DB) No. 35 of 2021

Dinesh Kumar @ Diggal Appellant
Versus
The State of Jharkhand ... Respondent

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

For the Appellant : Mr. Kripa Shankar Nanda, Advocate
For the State : Ms. Nehala Sharmin, A.P.P

05/ 09.09.2021 Heard learned counsel for the appellant, Mr. Kripa Shankar Nanda and Ms. Nehala Sharmin, learned Additional Public Prosecutor for the State on the prayer for suspension of sentence made by this appellant through I.A. No. 4238 of 2021.

The sole appellant stands convicted for the offence under sections 302/34 of I.P.C and section 27 of Arms Act, by the impugned judgment dated 20.01.2021 rendered in Session Trial No. 161/2017 (S) by the Court of learned Sessions Judge, Bokaro and has been sentenced to undergo R.I. for life under sections 302/34 of I.P.C with a fine of Rs. 15,000/- and default sentence and further sentenced to undergo R.I. for five years under section 27 of Arms Act with a fine of Rs. 5,000/- and default sentence, vide impugned order of sentence dated 25.01.2021.

Learned counsel for the appellant submits that the judgment in the case of the appellant was delivered separately as he had absconded on the date of the judgment in the same Sessions Trial No. 161 of 2017, wherein other accused persons, namely, Prem Ram @ Mukesh Ram, Anup Kumar and Lelu Sharma @ Rahul Sharma were convicted on 25th November, 2019 by the Court of learned District & Sessions Judge, Bokaro on the basis of same evidence. He submits that as per the findings rendered in the present appeal, which is based on same evidence, the deceased was shot only by the co-accused, Brij Kishore Singh which was missed fire and thereafter accused, Prem Ram shot him on abdomen leading to his death during course of treatment. The injuries have been corroborated by doctor (P.W.1), who conducted the post-mortem on the deceased as per Ext. -1. It is submitted that the present appellant has been convicted with the aid of Section 34 of I.P.C. It is further submitted that in the other Sessions Trial no. 161 of 2017, two other co-convicts, namely, Lelu Sharma @ Rahul Sharma and Anup Kumar, who were also convicted with the aid of Section 34 of I.P.C, have been granted bail by a Coordinate bench of this Court vide orders dated 26th August, 2020 and 2nd July, 2020 passed in Cr. Appeal (DB) Nos. 74 of 2020 and 47 of 2020

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respectively (Annexure- 2 Series to the I.A) by suspending their sentence during pendency of the appeal. It is submitted that those appellants have been enlarged on bail on the grounds that there was direct and specific allegation against the other co-accused to have assaulted the deceased by firearm, which proved fatal. Appellant is in custody since the date of his conviction as he was all along on bail during trial. Therefore, on similar grounds appellant may be granted privilege of suspension of sentence as there is no direct evidence against him also, who has been convicted with the aid of Section 34 of I.P.C

Learned Additional Public Prosecutor has opposed the prayer.

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 instances of other co-convicts in Sessions Trial no. 161 of 2017 out of split up record, of which the present impugned judgment has been delivered. It appears on consideration of the materials on record that the deceased was shot by accused, Brij Kishore Singh, which missed fire and thereafter the accused, Prem Ram shot him on abdomen leading to his death during course of treatment. Petitioner's case is similarly situated to that of other co-accused, Lelu Sharma @ Rahul Sharma and Anup Kumar referred to above. Taking into consideration the facts and circumstances of the case, we are inclined to grant bail to the appellant by suspending his sentence during pendency of this appeal. Accordingly, appellant, above-named, shall be released on bail, during the pendency of this appeal, on furnishing bail bonds of Rs. 10,000/- (Rupees Ten Thousand) with two sureties of the like amount each, to the satisfaction of learned Sessions Judge, Bokaro in connection with Session Trial No. 161/2017 (S) with the condition that the appellant and his bailors shall not change their address or mobile number without permission of the learned Trial Court.

I.A. No. 4238 of 2021 stands allowed.

Let the records of the instant case be tagged along with Cr. Appeal (DB) Nos. 74 of 2020 and 47 of 2020.

(Aparesh Kumar Singh, J)

(Anubha Rawat Choudhary, J)