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**(2011) 09 JH CK 0017**

**Jharkhand High Court**

**Case No:** I.A. (Cr.) No. 413 of 2011 in Cr. Appeal (DB) No. 318 of 2007

Md. Irfan @ Dablu

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

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**Date of Decision:** Sept. 23, 2011

**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 389
- Penal Code, 1860 (IPC) - Section 302, 34

**Hon'ble Judges:** Rakesh Ranjan Prasad, J; Dhirubhai Naranbhai Patel, J

**Bench:** Division Bench

**Final Decision:** Dismissed

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**Judgement**

@JUDGMENTTAG-ORDER

D.N. Patel, J.

The present interlocutory application has been preferred u/s 389 of the Code of Criminal Procedure for suspension of sentence, dated 17th February, 2007, awarded by the Sessions Judge, Hazaribagh in Sessions Trial No. 179 of 2004 whereby, the present applicant has been punished for the offence punishable under Sections 302/34 of the Indian Penal Code.

2. Having heard counsel for both the sides and looking to the evidences on record, there are several evidences against the present Appellant . Moreover, there are several eye witnesses, who have given their depositions before the trial court on the basis of which the present Appellant has been convicted. The role played by the present Appellant is vital. Previously also, bail application for suspension of sentence of the present Appellant bearing I.A. No. 1712 of 2009 was rejected on merits by a detailed speaking order dated 26th August, 2009. Paragraph no. 5 thereof reads as under:

5. Suffice it to say, at this stage that looking to the evidence given by P.W.1, who has stated in his deposition that deceased, was initially having a hot altercation with the original accused nos. 1 and 3. Thereafter, he was one of the coaccused and when injured was running away with the head injury, he was caught hold by the present Appellant (original accused No. 2), namely Md. Irfan @ Dablu and, thereafter, he was again beaten and assaulted. Several injuries, more than half a dozen in number, have been inflicted upon the deceased and thereafter the deceased expired. Thus, the injured deceased was running away with the head injury and the role played by the present appellant accused is vital, resulting into the death of the deceased. The deposition of P.W. 1 is also corroborated by depositions of PWs. 2, 3 and 6 (Informant). All these witnesses are the eyewitnesses. There is also no question of misidentity of accused because these witnesses were knowing the accused. The deposition of these eyewitnesses, namely, P.Ws. 1, 2, 3 and 6 are being also corroborated by the deposition of P.W.7, who is Dr. Rajesh Kumar. There are several injuries upon the deceased.

In view of the aforesaid role played by the present Appellant and looking to the gravity of the offence, the quantum of punishment and the manner in which the present Appellant is involved in the offence, as alleged by the prosecution, we are not inclined to suspend the sentence awarded to the present Appellant by the trial court.

3. There is no substance in this interlocutory application. Hence, the same is, hereby, dismissed.