

**(2012) 11 JH CK 0037**

**Jharkhand High Court**

**Case No:** Criminal Appeal (DB) No. 711 of 2012

Yakub Khan and Jubair Khan

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

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**Date of Decision:** Nov. 6, 2012

**Hon'ble Judges:** Prashant Kumar, J; Dhirubhai Naranbhai Patel, J

**Bench:** Division Bench

**Advocate:** A.K. Kashyap and Mr. Ajit Kumar Dubey, for the Appellant; Sanjay Kumar Srivastava, Assistant Public Prosecutor, for the State, for the Respondent

**Final Decision:** Dismissed

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**Judgement**

D.N. Patel, J.

Both these appeals have already been admitted and the records and proceedings was called from the trial court for considering the prayer for suspension of sentence of the appellants. These appeals are arising out of the same judgment and order of conviction dated 11th June, 2012 passed in Sessions Trial No. 75 of 1994. Record and proceedings of the trial court have been received. The appellants in Cr. Appeal No. 711 of 2012 are original accused nos. 2 and 3 and appellant in Cr. Appeal No. 761 of 2012 is original accused No. 1. Having heard counsel for both the sides and looking to the evidences on record, it appears that there is a prima facie case against these appellants. As the criminal appeals are pending, we are not much analyzing the records, but, suffice it to say that the case of the prosecution is based upon several eye witnesses, who are P.W. 5, P.W. 6 and P.W. 7 and looking to their depositions it appears that they have narrated clearly the role played by these appellants-accused in the occurrence. The weapon used by original accused No. 1 is sharp cutting weapon. Original accused nos. 2 and 3, who are appellants in Cr. Appeal No. 711 of 2012, had caught hold of the deceased and original accused No. 1 has caused injuries upon the deceased. Looking to the medical evidences, there are five injuries upon the body of the deceased. Thus, the role played by all the appellants are most crucial as per the prosecution case based upon the depositions of the eye witnesses.

Moreover, the F.I.R. is immediate in nature. The incident has took place on 05.04.1990 at night about 1.00 a.m. and the F.I.R. has been lodged on 6th April, 1990 at about 5.30 p.m. The appellants are named in the F.I.R. and the role played by the appellants were also narrated in the F.I.R. Looking to theses evidences on record, there is prima facie a case against these appellants in both the appeals.

2. Counsels for the appellants have argued out the case at much length with fine nicety of the evidences on record and they have pointed out that neither the Doctor nor the Investigating Officer have been examined in this case and therefore, the sentence awarded to the appellants may be suspended. Moreover, it has also been argued that the F.I.R., which was lodged, has been reached to the concerned Magistrate on 9th April, 1990. These arguments are not accepted by this Court looking to paragraph No. 15 (iii) and (iv) of the judgment of the trial court. In view of these facts and also looking to the gravity of offence, quantum of punishment and the manner in which the appellants are involved in the offence, as alleged by the prosecution, we are not inclined to suspend the sentence, awarded by the trial court, to the present appellants in both the appeals. Hence, the prayer for suspension of sentence is, hereby, rejected.