

Ganesh Pingua Vs State of Jharkhand

Court: Jharkhand High Court

Date of Decision: Nov. 16, 2009

Acts Referred: Criminal Procedure Code, 1973 (CrPC) â€” Section 389(1)
 Penal Code, 1860 (IPC) â€” Section 302, 307, 34

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

Bench: Division Bench

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

D.N. Patel, J.

Present application [I.A.(Cr.) No. 2234 of 2009] has been preferred u/s 389(1) of the Code of Criminal Procedure for

suspension of sentence awarded by the trial court to the appellant for the offence punishable u/s 302 to be read with Section 34 as well as for the

offence punishable u/s 307 to be read with Section 34 of the Indian Penal Code for committing murder of two persons.

2. We have heard learned Counsel for both the sides and perused the record of the trial court.

3. Having heard learned Counsel for both the sides and looking to the depositions of the prosecution witnesses and other evidences on record,

there is a prima facie case against the appellant-accused.

4. Counsel for the appellant-accused has argued out the case in much details.

5. Since the criminal appeal is pending, we are not much analyzing the evidence on record. Suffice it to say, that looking to the depositions of the

prosecution witnesses, especially P.W.5, the present appellant-accused was present at the field where the victims were ploughing. The appellant-

accused was having weapon in his hand and he assaulted the deceased. This is a double murder case, one expired on the spot and another expired

in Sadar Hospital, Chaibasa. This witness (P.W.5) has clearly narrated the role played by the appellant-accused. There is enough corroboration to

the depositions of P.W.7 and P.W.8. who are also eye witnesses of the Incident about the role played by the appellant-accused in committing

murder of the deceased and the case of the prosecution is based upon the eye witnesses for the murders of the deceased and looking to the

evidences of P.Ws.5, 7 and 8, there is a prima facie case against the appellant-accused and looking to the gravity of the offence and the quantum

of punishment and the manner in which the whole incident has taken place and looking to the involvement of the appellant-accused, we are not

inclined to suspend the sentence awarded to the appellant-accused, by the trial court.

6. Counsel for the appellant-accused has submitted that similarly situated co-accused have been acquitted but as the appellant-accused was

absconding, his case was separated and was tried separately and therefore, sentence awarded by the trial court deserves to be suspended.

7. This contention is not accepted by this Court for several reasons but as this is only u/s 389(1) of the Code of Criminal Procedure, suffice it to

say that star prosecution witnesses, namely, P.W.7 and P.W.8, for any reason whatsoever, who are eye witnesses, were not examined in a

previous sessions trial whereas, in the facts of the present case, they have been examined, they have clearly narrated the role played by the

appellant-accused in committing murder of the deceased.

8. In view of this fact, there is no reason to accept the plea canvassed by the counsel for the appellant-accused for suspension of sentence of the

appellant.

9. There is no substance in the present interlocutory application and hence, I.A.(Cr.) No. 2234 of 2009 is hereby dismissed.