

**(2016) 05 JH CK 0151**

**JHARKHAND HIGH COURT**

**Case No:** Criminal Appeal (D.B.) No. 26 of 2015 with I.A. No. 2798 of 2016.

Chulhan Rajwar, son of Late  
Suneshwar Rajwar - Appellant  
@HASH The State of Jharkhand

APPELLANT

Vs

RESPONDENT

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**Date of Decision:** May 26, 2016

**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 384

**Citation:** (2016) 4 ECRC 7 : (2017) 1 PCCR 52

**Hon'ble Judges:** Virender Singh, CJ. and Anant Bijay Singh, J.

**Bench:** Division Bench

**Advocate:** Mr. Sanjay Kr. Pandey, Advocate, for the Appellant; Mr. H.P. Singh, A.P.P, for the State

**Final Decision:** Allowed

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**Judgement**

**Virender Singh, C.J.** - I.A. No. 2798 of 2016

Heard the learned counsel for both the sides and perused the record.

2. Through the instant application all the three applicants-appellants, Chulhan Rajwar (72 years), his son Nandu Rajwar and Budhani Devi, wife of the deceased, are praying for suspension of sentence during the pendency of the main appeal. They stand convicted for the charge of Section 302/34 I.P.C. for allegedly killing one Nagdeo Rajwar on the night intervening 2/3.02.2008 vide impugned judgment of learned Sessions Judge-II, Garhwa dated 29.11.2014.

3. The learned counsel for the applicants-appellants vehemently contended that not only all the three applicants-appellants were on bail during trial and are now in custody since 26.11.2014, the date of passing the impugned judgment, even otherwise the case of the prosecution is on a very slippery wicket inasmuch as, the

prosecution is relying upon the statement of P.W.1, the so-called eyewitness whose evidence, if appreciated in its right perspective, would show that he, in fact, was not present at the scene of crime at wee hours of the night. The learned counsel then submitted that other witness which the prosecution made an attempt to import is the mother of the deceased and it is not believable on the face of it that she had accompanied her son (deceased) to his in-laws house. Learned counsel submitted that if the aforesaid prosecution evidence as put forth turns out to be unbelievable on the face of it because of certain vital flaws crept in the prosecution case, perhaps there appears to be no other evidence worth proving the charge against any of the applicants-appellants to the hilt.

4. Although, the State Counsel has opposed the prayer for suspension of sentence made on behalf of all the three applicants-appellants, yet keeping in view the totality of the facts and circumstances of the case and without commenting on the merits of the case, lest it may prejudice the case of either side at the relevant stage of final hearing of the main appeal, all the three applicants-appellants deserve the concession of suspension of sentence during the pendency of the appeal.

5. Resultantly, the instant application is allowed, as prayed for.

6. Let all the three applicants-appellants namely, Chulhan Rajwar, Nandu Rajwar and Budhani Devi, be released on bail, during the pendency of the instant appeal, on furnishing bail bond of Rs.20,000/- (Rupees Twenty Thousand) each with one surety, to the satisfaction of the Additional Sessions Judge-II, Garhwa, in connection with S.T. No. 157/2008.