

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.352 of 2002

Arising Out of PS.Case No. -null Year- null Thana -null District- MADHEPURA

Achhelal Mukhiya son of Ramdhari Mukhiya, resident of village-Ghonghar, P.S.-
Babubarhi, present resident of village-Chandardeh, P.S.-Khajauli, District-
Madhubani Appellant

Versus

State of Bihar Respondent

Appearance :

For the Appellant/s : Mr. Ram Bilash Roy "Raman", Advocate
For the Respondent/s : Mr. Satya Narain Prasad, A.P.P. and
: Mr. Anis Akhtar, Amicus Curiae.

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 26-02-2015

Heard Mr. Ram Bilash Roy, learned counsel for the
appellant, Mr. Anis Akhtar, learned amicus curiae and Mr. Satya
Narain Prasad, learned Additional Public Prosecutor for the State.

This appeal under section 374(2) of the Code of Criminal
Procedure has been filed by the appellant against the judgment and
order of conviction and sentence dated 6.7.2002 passed by the learned
Additional Sessions Judge, Fast Track Court-II, Madhubani in
Sessions Trial No.95 of 1986/171 of 2002 whereby the appellant has
been convicted under section 376 of the Indian Penal Code and
sentenced to undergo rigorous imprisonment for seven years and to
pay a fine of Rs.5,000/- and in default thereof to undergo simple
imprisonment of six months.

When the appeal was taken up for hearing on 25th February,
2014, it was pointed out by the learned counsel for the appellant that



the sole appellant has already died. On the oral submission of the counsel for the appellant, a report was called for from the Superintendent of Police, Madhubani regarding death of the sole appellant. The Superintendent of Police, Madhubani vide his letter no.421 dated 23rd May, 2014 reported to this Court that the appellant has died on 9th April, 2008. Subsequently, by order dated 16th January, 2015, a Bench of this Court directed the District Magistrate, Madhubani to furnish details of legal heirs of the deceased appellant. The District Magistrate, Madhubani vide his letter no.166 dated 6th February, 2015 has reported that the deceased appellant had two wives. From his first wife he had one son and from his second wife he had two sons and at present all the three sons of the deceased appellant are legal heirs of the property of the late appellant.

Apparently, the sole appellant has died on 9th April, 2008. Despite lapse of about seven years, no application seeking leave to proceed with the appeal in terms of section 394(2) of the Code of Criminal Procedure (hereinafter referred to as “the Code”) has been filed. Sub section (2) of section 394 of the Code deals with appeal by convicted person and it provides that such appeal shall finally abate on the death of the appellant except appeal from a sentence of fine. Section 394 of the Code reads as under:-

“394. Abatement of appeals.- (1) xxxxx xxxxx

xxxxx

(2) Every other appeal under this Chapter (except an appeal from a sentence of fine) shall finally abate on the death of the appellant:

Provided that where the appeal is against a conviction and sentence of death or imprisonment, and the appellant dies during the pendency of the appeal, any of his near relatives may, within thirty days of the death of the appellant, apply to the Appellant Court for leave to continue the appeal; and if leave is granted, the appeal shall not abate.”

It would be apparent from perusal of proviso to sub section (2) of section 394 of the Code that period of thirty days has been statutorily fixed for making an application by legal heirs for leave to continue the appeal on death of the appellant. In the instant case, no such application has been filed by the legal heirs till date after the appellant's death on 9th April, 2008 and, hence, the appeal cannot continue.

In that view of the matter, this appeal abates on death of the appellant.

(Ashwani Kumar Singh, J)

Md.S./-

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