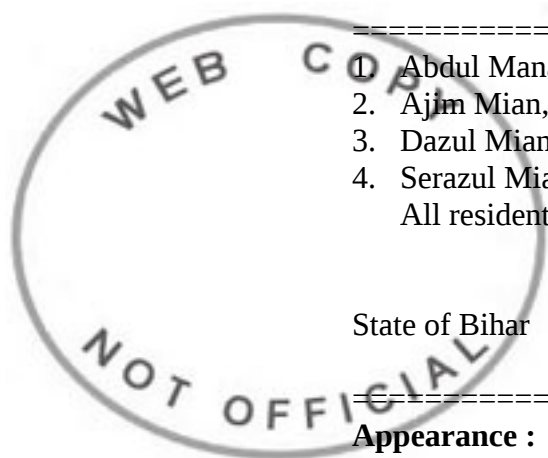




IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.379 of 2002

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1. Abdul Manan Mian ,	
2. Ajim Mian, both sons of Late Hamid Mian,	
3. Dazul Mian @ Zagul @ Wazul Mian,	
4. Serazul Mian, son of Late Rajak Mian,	
All resident of village-Rajpur, P.S. Kesariya, Distt-East Champaran	
	 Appellant/s
Versus	
State of Bihar	
	 Respondent/s

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Appearance :
For the Appellant/s : Mr. Uma Shankar, Adv.
Mr. Binod Kumar Mishra,
For the Respondent/s : Mr. Bipin Kumar, APP

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL JUDGMENT
Date: 19-01-2015

Heard learned counsel for the appellants as well as learned
APP for the State.

2. Learned counsel for the appellants confined his
argument only to the extent of sentence.

3. Highlighting the aforesaid points, it has been submitted
that dispute had arisen on account of own lapses of informant which
he himself narrated. It has also been submitted that occurrence is of
the year 1984 and during intervening period of thirty years, appellants
have faced ordeal of trial, mental agony. It has also been submitted
that from the lower court record, it is apparent that appellants have got
no criminal antecedents as well as are not convicts. It has also been
submitted that in the background of own fault of prosecution, though



shown to be motive but that could be taken a cause which irked the appellants and as the appellant/convict, Dazul Mian @ Zagul @ Wazul Mian who has been found guilty for an offence punishable under Section 324 IPC and sentenced to undergo RI for two years, is dead and further other appellants who have simply been alleged to have assaulted by means of fists and slaps on the order of appellant, Abdul Mannan Mian, are also found to have entered at the last span of their life, on account thereof, needs interference over modification in sentence.

4. The learned APP opposed the prayer but fairly concedes so far, age of appellants are concerned as well as conviction of the appellants by the learned trial court under Section 323/34 IPC, 452/34 IPC.

5. Before coming to the main issue, it is apparent from the previous order-sheets that appellant no.3, Dazul Mian @ Zagul @ Wazul Mian is dead. It is also apparent that his death has been confirmed by the Superintendent of Police, East Champaran at Motihari. It is also apparent from the order dated 19.06.2014 that an opportunity was given the heirs of appellant, Dazul Mian @ Zagul @ Wazul Mian for substitution in terms of Section 394 (2) Cr.P.C. as the aforesaid appellant along with others while convicted for an offence punishable under Sections 452/34 IPC was directed to undergo RI for



five years as well as also fined of Rs. 500/- and in default thereof, to undergo three months imprisonment. No substitution has been made and on account thereof, though so far sentence part is concerned, that will abate, however, the fine subsisting against him by the learned trial court by way of judgment of conviction and sentence will remain operative and for that the learned trial court will proceed in accordance with law as no substitution is found properly carried with.

6. Now, coming to the prayer made on behalf of remaining appellants inconsonance with submission raised on behalf of APP as well as taking into account the nature of the allegation along with intervening period, it looks prudent to accede to the submission made on behalf of appellants.

7. In the aforesaid facts and circumstances, maintaining the conviction recorded by the learned trial court under Sections 323/34 IPC, 452/34 of the IPC, the respective sentences inflicted by the learned trial court for the aforesaid Sections separately and independently is moulded and accordingly, each appellant is directed to undergo RI for four months as well as also fined of Rs. 10,000/- in default thereof, to undergo RI for six months under Sections 323/34 IPC. In likewise manner, each appellant is directed to undergo RI for four months as well as also fined of Rs. 10,000/- under Section 452/34 IPC. In case of default the appellants will undergo RI for six months.

8. As the appellant, Dazul Mian @ Zagul @ Wazul Mian is dead, on account thereof, the conviction and sentence recorded against him by the learned lower court is not interfered with in absence of proper substitution.

9. Appellants are on bail, hence their bail bonds are cancelled with a directed to surrender before learned trial court to serve out the remaining sentences.

10. With the aforesaid modification in sentence, the instant appeal is dismissed.

(Aditya Kumar Trivedi, J)

Patna High Court
January 19th 2015
perwez/AFR

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