

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.5 of 2016

Arising Out of PS.Case No. -52 Year- 1999 Thana -SARAIYA District- MUZAFFARPUR

- =====
1. Ahilya Devi wife of Suresh Thakur
 2. Kedar Thakur, son of Kailash Thakur
 3. Ravindra Thakur son of Kailash Thakur
 4. Suresh Thakur @ Bunela Thakur, son of late Sirtaj Thakur

All are resident of village_ Ratanpura, P.S._ Saraiya, O. P. Jaintpur,
District- Muzaffapur.

..... Appellants
Versus

The State of Bihar
..... Respondent

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with
Criminal Appeal (SJ) No.12 of 2016

Arising Out of PS.Case No. -52 Year- 1999 Thana -SARAIYA District- MUZAFFARPUR

- =====
1. Kedar Thakur
 2. RAVindra Thakur

Both are sons of late Kailash Thakur, resident of village- Ratanpur, P.S.
Saraiya, District- Muzaffarpur.

..... Appellants
Versus

The State of Bihar
..... Respondent

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Appearance :

(In CR. APP (SJ) No.5 of 2016)

For the Appellant/s : Mr. Yugal Kishore, Advocate

For the Respondent/s : Mr. Sujit Kr.Singh, APP

(In CR. APP (SJ) No.12 of 2016)

For the Appellant/s : Mr. Prakash Chandra Jha, Advocate

For the Respondent/s : Mr. S. A. Ahmad, , APP

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL ORDER

2 08-01-2016 These two appeals under Sections 374(2) and Section
389(1) of the Code of Criminal Procedure, 1973 (For short
“CrPC”) have been filed by the respective appellants against the

judgment of conviction dated 04.12.2015 and order of sentence dated 10.12.2015 passed by the learned Additional Sessions Judge, II, Muzaffarpur in Sessions Trial No. 559 of 2000 arising out of Saraiya P. S. Case No. 52 of 1999, whereby and whereunder the appellants have been convicted *inter alia* under Section 307/34 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for three years.

It is shocking to note that two of the appellants, namely, Kedar Thakur and Ravindra Thakur are common in both the appeals. When this fact came to the notice of the Court, Mr. Prakash Chandra Jha, learned counsel for the appellants in Cr. Appeal (SJ) No. 12 of 2016 has sought for leave to withdraw the appeal.

It has been contended by him that Mr. Baijnath Singh, who has handed over the brief to him, has also sworn affidavit before this Court in Cr. Appeal (SJ) No. 12 of 2016. He has submitted that said Baijnath Singh was not aware of the fact that another appeal had already been preferred by the appellants, namely, Kedar Thakur and Ravindra Thakur vide Cr. Appeal (SJ) No. 5 of 2016.

Be that as it may, under the facts and circumstances of the case and in view of the submissions made by Mr. P. C. Jha, learned counsel for the appellant, Cr. Appeal (SJ) No. 12 of

2016 is dismissed as not pressed.

So far as Cr. Appeal (SJ) No. 05 of 2016 is concerned, it has been contended that the appellants have been convicted *inter alia* under Section 307/34 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for three years and to pay a fine of Rs.3000/- each.

Mr. Yugal Kishore, learned counsel for the appellants has submitted that while convicting the appellants and sentencing them for the respective offences under Sections 307/34, 323, 324, 379, 448 and 504 of the Indian Penal Code, the trial Court itself has granted them provisional bail in exercise of powers conferred under sub-Section (3) of Section 389 of the Code of Criminal Procedure, 1973. He has submitted that the provisional bail granted to the appellants by the Court below be confirmed during the pendency of the appeal.

I have heard learned counsel for the appellants in Cr. Appeal (SJ) No. 5 of 2016 and pursued the impugned judgment.

Regard being had to the evidence as discussed in the impugned judgment and the conduct of the appellants, I am not inclined to confirm provisional bail granted to the appellants by the trial Court. They are directed to surrender before the Court below within a period of one week from today, failing which the Court below is directed to take steps to secure their arrest.

Call for the lower court records.

Prayer for bail of the appellants shall be considered after receipt of the lower court records and surrender of the appellants before the Court below.

(Ashwani Kumar Singh, J.)

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