

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.54 of 2016

Arising Out of PS.Case No. -95 Year- 2009 Thana -DIGHWARA District- SARAN

Santosh Kumar Giri, son of Raj Nandan Giri, resident of village Kochuara, Police Station - Dariyapur, District Saran (Informant).

.... Appellant

Versus

1. The State of Bihar.
2. Sheo Giri alias Sheo Narayan Giri
3. Satya Narain Giri, Both sons of late Harihar Giri Nos. 2 & 3 residents of village Kochuara, Police Station Dariyapur, District Saran (Nos. 2 & 3 are accused).

.... Respondents

Appearance :

For the Appellant : Mr.

For the Respondents : Mr.

CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA

and

HONOURABLE JUSTICE SMT. ANJANA PRAKASH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HEMANT GUPTA)

Date: 28-03-2016

Heard learned counsel for the appellant and the respondents.

2. The present appeal is against acquittal of Sheo Giri and Satya Narain Giri, both sons of late Harihar Giri. The learned trial court has recorded a categorical finding that there is no iota of evidence on record to prove their participation in the occurrence. None of the witnesses have deposed regarding their participation, much less, being member of unlawful assembly. Hence, the trial court recorded a finding that the charges are not proved against them.

3. The present appeal by the brother of the deceased is barred by limitation as there is delay of 7½ month in filing the appeal. For condoning the said delay in filing the appeal, a limitation petition bearing I.A. No. 167 of 2016 has been filed.

4. We do not find that any sufficient cause is made out for condonation of such delay. There is no explanation much less sufficient to seek condonation of delay. I.A. No. 167 of 2016 is, thus, dismissed.

5. Apart from that, the appeal is not by a victim as defined under Section 2(wa) of the Code of Criminal Procedure. The appellant admits that father of the appellant is old. As per Section 2(wa) of the Code of Criminal Procedure, an appeal against acquittal is maintainable only by a victim or his legal heirs. In view of Section 8 of the Hindu Succession Act, 1956, father is Class II heir who is legal heir in preference to brother i.e. the appellant.

6. In view of the said fact, the appeal filed by the appellant is also not maintainable as well, which is, thus dismissed.

(Hemant Gupta, J)

(Anjana Prakash, J)

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