

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.89 of 2003

(Against the judgment of conviction and order of sentence dated 4.2.2003 passed by Shri Jayanta Kumar Sen, 7th Additional Sessions Judge, West Champaran at Bettiah, in Sessions Trial No. 227/1992, arising out of Bettiah Town P.S. Case No. 258/91)

=====

1. Baijnath Ram
2. Shambhu Ram, both sons of Pyare Ram
3. Hemwanti Devi @ Hemwati Devi, W/o Baijnath Ram, all residents of Mohalla-Banswaria, P.S.-Bettiah Town, District-West Champaran.

.... Appellants

Versus

State of Bihar

.... Respondent/s

=====

Appearance :

For the Appellant/s : Mr. Navin Kumar, Amicus Curiae

For the informant : Mr. Bashishtha Narayan Mishra

For the Respondent/State : Mr. Satyanarayan Prasad, A.P.P.

=====

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

Date: 13-01-2018

No one appears on behalf of the appellants.

2. The appeal is of 2003.

3. Mr. Navin Kumar who is present in court has been requested to assist as Amicus Curiae.

4. Heard Mr. Navin Kumar, learned counsel appearing on behalf of the appellants as Amicus Curiae, Mr. Bashishtha Narayan Mishra, counsel for the informant and Mr. Satya Narayan Prasad, learned A.P.P. appearing on behalf of the State.

5. The present appeal has been preferred against the



judgment of conviction passed by 7th Additional Sessions Judge, West Champara at Bettiah in Sessions Trial No. 227 of 1992 dated 4.2.2003.

6. Mr. Bashishtha Narayan Mishra, appearing on behalf of the informant informs the court that appellant Baijnath Ram has died during the pendency of the appeal.

7. In view of the death of the appellant no.1 the appeal of appellant Baijnath Ram stands abated.

8. Remaining two appellants namely, Shambhu Ram and Hemwanti Devi @ Hemvati Devi has been convicted in this case. The appellant no.2 Shambhu Ram has been convicted under section 307/34 of the Indian Penal Code and sentenced to undergo R.I. for five years and a fine of Rs. 1000/- and in default of fine to undergo further R.I. for a period of six months. The appellant no.3 Hemwant Devi @ Hemvati Devi has been convicted under section 307/109 of the Indian Penal Code and sentenced to R.I. for five years and a fine of Rs. 1000/- and default of fine to undergo further R.I. for six months.

9. Learned counsel appearing on behalf of the appellants submitted that in the present case the allegation of assault is against appellant no.1 Baijnath Ram who is now no more. The allegation against appellant nos. 2 and 3 is that they have assisted Baijnath Ram as an aid in commission of crime.



10. The learned counsel for the appellants submitted that the incident is of dated 24.7.1991. More than 26 years has passed by now and the main assailant Baijnath Ram is now dead. The court is required to consider the case of the appellants in the backdrop of the fact that 26 years has passed by now. On the date of judgment dated 4.2.2003 the appellant Shambhu Ram was aged about 40 years and Hemwanti Devi @ Hemwati Devi was aged about 57 years and thus now they have become 55 years and 72 years old.

11. Learned counsel for the appellants submits that in view of the aforesaid, no useful purpose would be served by sending them to serve remaining sentences as they are not the main assailant and the appeal may be disposed of while upholding the conviction by reducing the sentence as period undergone.

12. Mr. Bashishtha Narayan Mishra appearing on behalf of the informant admitted that the Baijnath Ram has committed the crime and has assaulted the victim and in view of the nature of injury the conviction of Baijnath Ram does not suffer from any infirmity. However, he admitted that Baijnath Ram has died during the pendency of this appeal. He submits that the other two appellants have since assisted Baijnath Ram in commission of crime and as such they deserve punishment and as such the court should not interfere with the judgment of conviction and sentence.

13. Learned counsel appearing on behalf of the State is



not in a position to dispute the fact that the appellant Hemwanti Devi @ Hemwati Devi has now become 72 years old and appellant Shambhu Ram has become now 55 years old and there is no specific overt act of assault or material to indicate attraction of Section 34 of the IPC warranting conviction and sentence under section 307/34 of the Indian Penal Code.

14. Considering the totality of facts situation as discussed hereinabove, the court is of the view that in the peculiar facts and circumstances of the case when the main assailant is now no more and the appellants herein have now become of advanced age and the incident is of 1981 and the appellants have also suffered ordeal of trial and appeal for 26 long years, the court accepts submission of the counsel for the appellants that at this stage no useful purpose would be served by sending them jail to serve remaining part of the sentence.

15. In the peculiar facts and circumstances, the appeal is disposed of while upholding the conviction of appellants but instead of sending them to serve remaining part of the sentence, the sentence is modified as period undergone. The order of the trial court is modified and appeal is disposed with modification indicated hereinabove.

16. Since the appellants are on bail, they are discharged from the liabilities of the bail bonds.



17. Let a copy of this judgment be handed over to the learned Amicus Curiae.

(Anil Kumar Upadhyay, J)

Ravi/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	18.01.2018
Transmission Date	18. 01.2018

