

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.159 of 2009

1. Sakaldeo Rai.
2. Brahmdeo Rai
 above both are sons of late Muni Lal Rai,
3. Devendra Rai
4. Birendra Rai
 above both are sons of Sakaldeo Rai,
5. Rakesh Rai,
6. Ravindra Rai,
 above both are sons of Brahmdeo Rai.

... .. Appellant/s

Versus

STATE OF BIHAR

... .. Respondent/s

Appearance :

For the Appellant/s : Mr.Sujit Kumar Singh, Adv.
 Mrs. Bela Singh, Adv.
 Mr. Rajeev Rajan, Adv.

For the Respondent/s : Mr. Parmeshwar Mehta, A.P.P.

CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

ORAL JUDGMENT

Date : 28-11-2018

All the appellants, namely, Sakaldeo Rai, Brahmdeo Rai, Devendra Rai, Birendra Rai have been convicted and sentenced vide Judgment of conviction dated 18.02.2009 and order of sentence dated 21.02.2009, by the Additional Sessions Judge FTC No.II, Muzaffarpur in Sessions Trial No.635 of 2006 as well as Sessions Trial No.262 of 2007 for an offence punishable under Section 307/34 IPC and sentenced each of them to undergo rigorous imprisonment for five years as well as to pay fine



appertaining to Rs.2000/- and in default thereof, to undergo simple imprisonment for two months additionally. Appellant Bhahmdeo Rai and Ravindra Rai have further been found guilty for an offence punishable under Section 326 of the IPC and each one has been sentenced to undergo rigorous imprisonment for four years with a further direction to run the sentences concurrently.

2) Because of the fact that the judgment impugned suffers from inherent lacunae on account thereof, facts of the case is forbidden. After going through the judgment impugned in consonance with the record, it is apparent that on the fardbeyan of Amarnath Rai recorded at S.K.M.C.H., Muzaffarpur on 08.10.2005 where he was admitted in an injured condition, Gaighat P.S. No.188 of 2005 was registered against the accused persons wherein, charge-sheet was submitted in two stages and on account thereof, there were two seperate proceeding leading to registration to two independent sessions trial bearing Sessions Trial No.635 of 2006 sailed against two accused, namely, Sakaldeo Rai and Brahmdeo Rai, while Sessions Trial No.262 of 2007 against accused Devendra Rai, Birendra Rai, Rakesh Rai and Rabindra Rai.

3) From the judgment impugned, it is also evident that both the Sessions Trial proceeded separately, independently. But,



as at the stage of argument, it was taken up jointly, on account thereof, both the Sessions trial have been disposed of by a common judgment under wrong notion.

4) From para 6 of the judgment, it is evident that learned lower Court had to some extent tried to identify the status of the witnesses under two different sessions trial independently properly but, right from paragraph 7 when the learned lower Court began to scrutinize the evidences, he proceeded with Sessions trial No.635 of 2006 and that being so, has committed gross error because of the fact that the accused facing Sessions Trial No.262 of 2007 were not an accused relegating to Sessions Trial No.635 of 2006 and that being so, whatever been collected during course of trial relate to Sessions Trial No.635 of 2006, could not be used against them as the same happens to be in utter violation of Section 273 of the Cr.P.C. wherein, all the evidences and subsequent event are to be taken up in presence of the accused.

5) That being so, the Judgment impugned is set aside. Appeal is allowed. Matter is remitted back to the learned lower Court to hear argument independently relating to both the sessions trial and further, will pass judgment independently but on the same day. Appellants are on bail which is extended only for 15 days within which all the appellants will surrender before the learned



lower Court with a prayer for bail order which the learned lower Court will pass order in accordance with law. Otherwise the learned lower Court will be at liberty to proceed against the absentee accused in accordance with law.

6) Whole exercise must be completed within three months from receipt of the L.C. record. The District and Sessions Judge, Muzaffarpur will ensure that the sessions trial has to be culminated within the aforesaid period of three months and will submit report failing which the District and Sessions Judge, Muzaffarpur will be accountable for disobedience of the Court's order.

7) Office is directed to transmit the record at once to the learned lower Court.

(Aditya Kumar Trivedi, J)

sanjeev/-

AFR/NAFR	NAFR
CAV DATE	NA
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