

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No. 240 of 2003

Arising Out of PS. Case No. -32 Year- 1992 Thana -MAIRVA District- SIWAN

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1. Anil Harijan, son of Narayan Harijan
2. Hari Harijan, son of Sheo Narayan Harijan
3. Paras Harijan @ Paras Ram Harijan, son of Sheo Narayan Harijan
All resident of village Bilaspur (Lakshmipur) P.S. Mairva, District-Siwan.

.... Appellants

Versus

The State of Bihar

.... Respondent

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Appearance :

For the Appellants : Mr. Neeraj Kumar @ Sanidh, Adv.

For the Respondent : Mr. Sujit Kumar Singh, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA

ORAL JUDGMENT

Date: 06-02-2018

1. Heard learned amicus curiae appearing for the appellants as well as learned Additional Public Prosecutor for the State and perused the record.

2. At the very outset, a legal question is raised on behalf of the parties that the present appeal is not maintainable before this Court as sub clause 2 of Section 374 of the Cr.P.C. says that if the sentence is more than seven years, then in that circumstance, the appeal against the judgment of conviction shall lie before this court but if the sentence is less than seven years, then in that circumstance, the appeal shall not lie before this court.

3. In the instant appeal, the judgment impugned has been



passed by the Presiding Officer, 1st Additional, F.T.C., Siwan and therefore, it is obvious that impugned judgment has been passed by the court while exercising the power of Sessions Judge. Sub clause 2 of Section 374 of the Cr.P.C. says that:-

“Any person convicted on a trial held by a Sessions Judge or an Additional Sessions Judge or on a trial held by any other Court in which a sentence of imprisonment for more than seven years [has been passed against him or against any other person convicted at the same trial]; may appeal to the High Court.”

4. From bare perusal of sub clause 2 of Section 374 of the Cr.P.C. goes to show that aforesaid provision speaks in respect of three type of courts. First, Sessions Judge, second, Additional Sessions Judge and third, any other Court and it is also obvious from perusal of the aforesaid provision that embargo of seven years imprisonment has been mentioned only in respect of “any other court” and that embargo shall not apply in respect of judgment of conviction and sentence order passed by a Sessions Judge or Additional Sessions Judge and, therefore, I am of the opinion that the instant appeal is maintainable before this Court.

5. The instant appeal has been preferred against the judgment of conviction and sentence order dated 28.03.2003 passed by the Presiding Officer, 1st Additional F.T.C., Siwan in Sessions



Trial No. 21 of 1994/224 of 2001 by which and whereunder learned Presiding Officer, 1st Additional F.T.C., Siwan convicted the appellants for the offences punishable under Section 324 of the Indian Penal Code and 27 of the Arms Act and accordingly, sentenced them to undergo rigorous imprisonment for two years under Section 324 of the Indian Penal Code and to undergo rigorous imprisonment for two years under Section 27 of the Arms Act. However, learned trial Judge ordered that both the sentences shall run concurrently.

6. The prosecution case, in brief, is that 15 to 16 persons came at the door of the informant, Makuni Baitha on 29.03.1992 at about 08:45 P.M. and at that time, the informant, Makuni Baitha was listening radio on his roof. However, the appellants, anyhow, managed to come on the roof of informant and on the order of appellant no. 3, appellant no. 1 opened fire from country made pistol causing firearm injury to informant, Makuni Baitha. The appellants also committed theft of belongings of the house of the informant and while leaving the place of occurrence, they again fired causing firearm injury to one Malti Kumari (PW-3). The appellants and his associates had gone to the house of informant in search of informant's brother, namely, Doctor Baitha (PW-2) but PW-2, anyhow, managed to run away from the place of occurrence. The reason behind the alleged occurrence is said to be land dispute as one Dhobi Ghat was in



possession of the informant and his family members but the appellants, anyhow, got settlement of the aforesaid land from the Circle Officer and wanted to take forcible possession of the aforesaid land.

7. Mairva P.S. Case No. 32 of 1992 for the offences punishable under Section 307 and other allied sections of the Indian Penal Code and 27 of the Arms Act was registered against the appellants and others. After investigation, charge sheet was submitted and accordingly, the appellants were put on trial.

8. The appellants were charged for the offences punishable under Sections 307, 326, 380, 324 of the Indian Penal Code and 27 of the Arms Act. In order to substantiate the charges, prosecution examined, altogether, seven witnesses and got exhibited some documents including injury reports. The statements of appellants were recorded under Section 313 of the Cr.P.C. in which they denied the prosecution story and claimed their false implication. The appellants, too, brought documentary evidence on record in support of their defence.

9. The learned trial court after scrutinizing the materials available on the record acquitted the appellants for the offence punishable under Section 307 of the Indian Penal Code but convicted them for the offence punishable under Sections 324 of the Indian



Penal Code and 27 of the Arms Act.

10. Learned amicus curiae appearing for the appellants submits that there was land dispute between the parties and the possibility of false implication on account of the aforesaid land dispute cannot be ruled out. He further submits that admittedly, the alleged occurrence took place at 08:45 P.M. and the informant claimed to have identified the appellants in the light of *laltain* but no *laltain* was seized nor produced before the trial court in course of trial. He further submits that moreover, the alleged occurrence had taken place in the year 1992 and the appellants already remained in custody for considerable period during course of trial and, therefore, even if this court comes to the conclusion that the prosecution successfully proved the charges levelled against the appellants, then also, this Court should take lenient view in awarding the sentence to the appellants.

11. On the other hand, learned Additional Public Prosecutor supported the impugned judgment of conviction and sentence order arguing that both injured were examined by the trial court and apart from this, the doctor also proved injury reports and, therefore, the prosecution successfully proved this fact that on the alleged date of occurrence, the appellants had caused injury to informant as well as Malti Kumari by opening fire on them and,



therefore, there is no scope for this court to interfere into the impugned judgment of conviction and sentence order.

12. Having heard the contentions of both the parties, I went through the record. Admittedly, the alleged occurrence took place on account of land dispute and it is also an admitted position that the appellants had taken the land in question in settlement and prior to alleged occurrence i.e. in the year 1963 in rent fixation case, the rent of the aforesaid land was fixed in favour of the appellants. However, there is nothing on the record to show that even after taking the land in question in settlement the appellants came in possession of the aforesaid land. The learned trial Judge has discussed the aforesaid point and came to conclusion that the appellants were aggressive. The learned trial Judge also found that the appellants had caused firearm injury to injured persons of this case and I do not find any ground to interfere into the finding of learned trial Judge.

13. The learned trial Judge has awarded two years each imprisonment to appellants under Sections 324 of the Indian Penal Code and 27 of the Arms Act. I find that in course of investigation and trial, the appellants were taken into custody and were remanded to jail and subsequently, they were granted bail. The aforesaid fact clearly goes to show that appellants remained in judicial custody for some period. The occurrence had taken place for more than 26 years



ago due to land dispute. Therefore, in my view, the end of justice would meet, if the appellants are sentenced to the period already undergone by them in course of investigation as well as trial.

14. On the basis of aforesaid discussions, this criminal appeal stands dismissed modifying the sentence order in the manner as stated above.

15. The first and last page of this judgment be handed over to learned amicus curiae for needful.

(Hemant Kumar Srivastava, J)

SHAHZAD/-

AFR/NAFR	AFR
CAV DATE	N.A.
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