

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.3326 of 2018

Arising Out of PS.Case No. -81 Year- 1985 Thana -BHAWANIPUR District- PURNIA

- =====
1. Srikant Thakur son of Late Badri Thakur, resident of village- Raghunathpur, P.S.-Bhawanipur, District- Purnea
 2. Viveka Jha @ Kuchchan Jha @ Viveka Nand Jha son of Late Muktinath Jha, resident of village- Prasmaui, P.S.-Sarsi, District- Purnea

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Rangh Nath Chaubey, Advocate

For the Respondent/s : Mr. Binod Bihari Singh, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 25-09-2018

Heard learned counsel for the appellants and learned counsel for the State.

2. This appeal under Section 374(2) of the Code of Criminal Procedure (for short 'Cr.P.C.') has been filed by the appellants against the judgment of conviction and order of sentence dated 27th July, 2018 and 31st July, 2018 respectively passed by the learned 1st Assistant Session Judge, Purnea in Session Trial No. 179 of 1986 arising out of Bhawanipur P.S. Case No. 81 of 1985.

3. The appellants were charged for the offences



punishable under Sections 452 and 307 of the Indian Penal Code (for short 'I.P.C.').

4. On completion of trial and after hearing the parties, the trial court convicted the appellants for each of the charges vide impugned judgment dated 27.07.2018.

5. After hearing the parties on the question of sentence, the learned 1st Assistant Session Judge, Purnea sentenced the appellants for seven years with fine of Rs. 5,000/- for each of the charges. However, the sentences were ordered to run concurrently.

6. Being aggrieved by the judgment and the order passed by the trial court, the appellants have preferred instant appeal before this Court.

7. As noted above, the appellants were tried in the court of Assistant Session Judge, Purnea, who had convicted and sentenced them for seven years rigorous imprisonment for each of the charges under Sections 307 and 452 of the I.P.C.

8. Section 374 of the Cr.P.C. provides as under:-

“(1) Any person convicted on a trial held by a High Court in its extraordinary original criminal jurisdiction may appeal to the Supreme Court.

(2) 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.

(3) Save as otherwise provided in sub-section (2), any person, -

(a) convicted on a trial held by a Metropolitan Magistrate or Assistant Sessions Judge or Magistrate of the first class or of the second class, or

(b) sentenced under section 325, or

(c) in respect of whom an order has been made or a sentence has been passed under section 360 by any Magistrate,

may appeal to the Court of Session.”

9. From a reading of the sub-sections (2) and (3) of section 374 of the Cr.P.C., it would be evident that from an order of conviction recorded by an Assistant Session Judge, if the sentence prescribed is not more than seven years, an appeal would lie before the Court of Session and not before this Court.

10. In that view of the matter, the instant appeal is not maintainable before this Court.

11. Accordingly the appeal is dismissed as not maintainable. However, the appellants would be at liberty to challenge



the impugned judgment by way of filing an appeal before the competent Court of Session.

(Ashwani Kumar Singh, J)

Md.S./-Sanjeev

AFR/NAFR	NAFR
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