

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.176 of 2009

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1. Mahesh Yadav, son of Ram Tahal Yadav.
 2. Gango Yadav, son of Dukho Yadav.
 3. Shree Yadav, son of Bana Yadav.
 4. Bishundeo Yadav @ Bishun Yadav, son of Ram Tahal Yadav.
 5. Khelawan Yadav, son of Prasadi Yadav.
 6. Ram Tahal Yadav, son of Late Chulhan Yadav.
 7. Jagdish Yadav, son of Prasadi Yadav.
 8. Bano Yadav, son of Dukho Yadav.
- All residents of village Sultanpur, Police Station Jamui, District-Jamui.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Baban Roy, Amicus Curiae

For the Respondent/s : Mr. Parmeshwar Mehta, APP

CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL JUDGMENT

Date : 10-12-2018

As the learned counsel for the appellants failed to appear on account thereof, Mr. Baban Roy, learned advocate has been requested to assist the court as an Amicus Curiae.

Appellants, Mahesh Yadav, Gango Yadav, Shree Yadav, Bishundeo Yadav @ Bishun Yadav, Khelawan Yadav, Ram Tahal Yadav, Jagdish Yadav have been found guilty for an offence punishable under Section 307 of the IPC and each one has been sentenced to undergo R.I. for 7 years, under Section 148 IPC and each one has been sentenced to undergo R.I. for three years, under Section 326 of the IPC and each one has been directed to undergo R.I. for five years as well as to pay fine appertaining to Rs.500/- in default thereof to undergo S.I. for one month, additionally while appellant Shree Yadav has further been found guilty for an offence punishable under Section 379 IPC and sentenced



to undergo R.I. for two years with a further direction to run the sentences concurrently by the Second Assistant Sessions Judge, Jamui in Sessions Trial No.613 of 1996.

This appeal would not have been entertained by the High Court as, being a sentence up to seven years passed by the Assistant Sessions Judge was appealable before the Sessions Judge as provided under Section 374 of the Cr.P.C. For better appreciation the same is quoted below:

374. Appeals from convictions.

(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 ² 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.

Because of the fact that none appeared on behalf of appellant on account thereof, the learned Amicus Curiae has submitted that this appeal be transmitted to the learned Sessions Judge, Jamui with a direction to pass order in accordance with law after noticing the appellants to remove the defects, if any so pointed out by the office including by way of filing vakalatnama.



Accordingly, office is directed to transmit this record to the appellate court that of learned Sessions Judge, Jamui who will notice the appellants and then after getting all the defects removed, will hear them and then will pass judgment in accordance with law. Side by side, appellants who are on bail are allowed to enjoy the privilege for two weeks hence forth and during midst thereof, will surrender before the learned lower court and then, will pray before the learned appellate court who will consider the same in accordance with law otherwise the learned lower court will be at liberty to proceed in accordance with law.

First and last page of judgment be handed over to the learned Amicus Curiae for the needful.

(Aditya Kumar Trivedi, J)

Prakash Narayan

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	11.12.2018
Transmission Date	11.12.2018

