

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.401 of 2015

Arising Out of PS.Case No. -239 Year- 2012 Thana -BAKHRI District- BEGUSARAI

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BIMLESH MAHTO SON OF RAGHU NANDAN MAHTO RESIDENT OF
VILLAGE - KARAITAR, P.S.- FAKHRI, DISTRICT - BEGUSARAI

..... Appellant/s

Versus

The State of Bihar Respondent/s

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Appearance:

For the Appellant/s : Mr. Arun Kumar Tripathi, Amicus Curiae
For the State : Mr. Binod Bihari Singh, APP

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

ORAL JUDGMENT

Date: 26-03-2018

This appeal has been filed by the sole appellant Bimlesh Mahto against the judgment of conviction dated 11.05.2015 and order of sentenced dated 13.05.2015 passed by Assistant Sessions Judge, IInd, Begusarai in Sessions Trial No.594/2013 whereby and whereunder the learned lower court had found him guilty for an offence punishable under Section 307 of the IPC and sentenced to undergo R.I. for seven years as well as to pay fine appertaining to Rs.10,000/- and in default thereof, to undergo R.I. for six months, under Section 353 IPC and sentenced to undergo R.I. for two years as well as to pay fine appertaining to Rs.4000/- and in default thereof, to undergo R.I. for one month, 25(1-B) a of the Arms Act and sentenced to undergo R.I. for three years as well as to pay fine appertaining to Rs.5000/- and in default thereof, to undergo R.I. for three months, under Section 26 of the Arms Act and sentenced to undergo R.I. for three years as well as to pay fine appertaing to Rs.5000/- and in default thereof, to undergo R.I. for three months, under Section 27 of the Arms Act and sentenced to undergo R.I. for



three years as well as to pay fine appertaining to Rs.5000/- and in default thereof, to undergo R.I. for three months, additionally, with a further direction to run the sentences concurrently.

2. Learned counsel for the appellant on repeated call did not turn up and on account thereof, Sri Arun Kumar Tripathi has been requested to assist the court as an Amicus Curiae.

3. Learned Amicus Curiae as well as learned Additional Public Prosecutor both have submitted that instant appeal is not maintainable before the High Court. Because of the fact that maximum sentence has been passed by the Assistant Sessions Judge up to seven years on account thereof, the appeal should have been preferred before the Sessions Judge. So it looks appropriate to direct the office to transmit the record to learned Sessions Judge/Appellate Court, Begusarai for its disposal in accordance with law.

4. In order to properly appreciate the submissions having made on behalf of learned Additional Public Prosecutor as well as learned Amicus Curiae, it looks appropriate to refer two relevant provisions at the present juncture. The first one happens to be Section 374 Cr.P.C. and the second happens to be Section 376 of the Cr.P.C.

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 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.

376. No appeal in petty cases.

Notwithstanding anything contained in section 374, there shall be no appeal by a convicted person in any of the following cases, namely:—

(a) where a High Court passes only a sentence of imprisonment for a term not exceeding six months or of fine not exceeding one thousand rupees, or of both such imprisonment and fine;

(b) where a Court of Session or a Metropolitan Magistrate passes only a sentence of imprisonment for a term not exceeding three months or of fine not exceeding two hundred rupees, or of both such imprisonment and fine;

(c) where a Magistrate of the first class passes only a sentence of fine not exceeding one hundred rupees; or

(d) where, in a case tried summarily, a Magistrate empowered to act under section 260 passes only a sentence of fine not exceeding two hundred rupees:

Provided that an appeal may be brought against any such sentence if any other punishment is combined with it, but such sentence shall not be appealable merely on the ground—

(i) that the person convicted is ordered to furnish security to keep the peace; or

(ii) that a direction for imprisonment in default of payment of fine is included in the sentence; or

(iii) that more than one sentence of fine is passed in the case, if the total amount of fine imposed does not exceed the amount hereinbefore specified in respect of the case.

5. From perusal of Section 374(2) of the Cr.P.C., it is evident that any judgment passed by the Magistrate or Chief Judicial Magistrate or Assistant Sessions Judge having sentenced up to seven years is appealable before Sessions Judge and that being so, appellant should have filed criminal appeal before the Sessions judge instead of before High Court. Furthermore, so far implication of Section 376 is concerned, clubbing of sentence has been prescribed



only for enabling the jurisdiction of the appellate court in case, the single sentence did not satisfy. Sentence up to seven years passed by the respective courts as indicated hereinbefore is appealable before the court of Sessions and so, the clubbing of sentence, if any, on account of having sentence inflicted less than the prescribed limit entertainable by the appellate court is found permissible and so, for the purpose of filing of this appeal before the High Court, appellate would not take advantage of Section 376 of the Cr.P.C.

6. In the aforesaid facts and circumstances of the case, it is apparent that this appeal is not maintainable before the High court as a result of which office is directed to transmit the record to the Sessions judge, Begusarai who after registering the criminal appeal to its own file will notice the appellant and then thereafter, hearing both the parties will pass judgment in accordance with law.

(Aditya Kumar Trivedi, J.)

Prakash Narayan

AFR/NAFR	A.F.R.
CAV DATE	N.A.
Uploading Date	28.03.2018
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