

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.591 of 2015

Arising Out of PS.Case No. -167 Year- 2009 Thana -BAKHTIYARPUR District- PATNA

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1. Shivan Rai Son of Late Sahdeo Rai, resident of village- Chiraiyan, P.S. Bakhtiyarpur, District- Patna

.... Appellant/s

Versus

1. The State of Bihar

.... Respondent/s

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Appearance :

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

For the Respondent/s : Mr. Sujit Kumar Singh, APP

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL JUDGMENT

Date: 09-07-2018

On repeated calls, nobody appears on behalf of appellant, on account thereof, Sri Baban Roy, Advocate has been requested to assist the court as an Amicus Curiae.

2. Before coming to the main stream, it is apparent from lower court record that appellant, Shivan Rai along with others were being prosecuted under Sessions Trial No. 1812/2011, 162/2013 (amalgamated later on) where under all the prosecution witnesses were examined, statement of the accused were recorded. After exhausting the stage of defence, argument began and after concluding the same, as is evident from order dated 29.04.2015, 12.05.2015 was the date fixed for judgment.

3. On 12.05.2015, appellant, Shivan Rai along with one Rajeev Rai, both were reported under Section 317 CrPC, on account thereof, the same was rejected, as a consequence thereof, bail bonds



were cancelled, trial was separated drawing Sessions Trial No. 1812A/2011. That means to say, absence of appellant in the main trial happens to be from the date of judgment.

4. Later on, as is evident from order dated 30.06.2015 of Sessions Trial No. 1812A/2011, appellant, Shivan Rai surrendered and on account thereof, he was taken to custody while Rajeev Rai remained absent and after exhausting processes as provided under Section 82, 83 CrPC vide order dated 27.08.2015, his trial was separated and then thereafter, argument was heard and by the judgment impugned, appellant has been found guilty and accordingly sentenced.

5. Appellant, Shivan Rai has been found guilty for an offence punishable under Section 148 IPC having no separate sentence inflicted therefor, Section 307/149 IPC and sentenced to undergo RI for 5 years, Section 304/149 IPC and sentenced to undergo RI for 7 years as well as to pay fine of Rs. 5000/-, in default thereof, RI for one year additionally, 27 of the Arms Act and sentenced to undergo RI for 3 years as well as to pay a fine of Rs. 3000/- in default thereof, to undergo RI 6 months additionally with a further direction to run the sentences concurrently vide judgment of conviction dated 15.09.2015 and order of sentence dated 18.09.2015 passed by Additional Sessions Judge, 3rd-Barh, Patna in Sessions Trial



No. 1812A/2011.

6. Subsequent event visualizing from the main record of Sessions Trial No. 1812/2011, 162/2013 forbids to go in detail as the convicts of the main Sessions Trial who were found guilty and sentenced therefor, in likewise manner, preferred so many appeals such as Cr. Appeal (SJ) No. 378/2015 (Nawal Roy @ Nawal Rai. v. State of Bihar), Cr. Appeal (SJ) No. 292/2015 (Ranjit Singh @ Ranjeet Singh v. State of Bihar), Cr. Appeal (SJ) No. 326/2015 (Satendra Rai @ Satendra Prasad. v. State of Bihar), Cr. Appeal (SJ) No. 334/2015 (Shiv Kumar Rai @ Shiv Kumar. v. State of Bihar), Cr. Appeal (SJ) No. 338/2015 (Manoj Singh v. State of Bihar), and the same were decided conjointly vide judgment dated 02.03.2016 by a Co-ordinate Bench of this Court whereunder, after having detailed discussions as well as minute scrutiny of the facts available on the records, appeals were allowed after setting aside the judgment of conviction and sentence. During course of allowing respective appeals, apart from inconsistency, material exaggeration, having been perceived during course of scrutiny thereof, legal flaws which severely dent upon the prosecution case were also found while properly appreciating the overall situation and the same has been exposed right from paragraphs-35 to 40. The same situation prevails against the appellant also and that being so, there happens to be no



occasion left for.

7. Consequent thereupon, the judgment impugned is set aside. Appeal is allowed. Appellant is on bail hence he is discharged from the liability of bail bond.

8. The first and the last pages of the instant judgment be handed over to the learned Amicus Curiae for the needful.

(Aditya Kumar Trivedi, J)

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AFR/NAFR	AFR
CAV DATE	N/A
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