

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.1146 of 2018

Arising Out of PS. Case No.-186 Year-2014 Thana- KURSAILA District- Katihar

Yogendra Mandal, Son of Late Pami Mandal, Resident of Village- Chai Tola,
P.S.- Kursela, District- Katihar.

... .. Appellant.

Versus

The State of Bihar.

... .. Respondent.

Appearance :

For the Appellant : Mr. Sunil Kumar Singh, Advocate.
For the State : Ms. Shashi Bala Verma, A.P.P.

**CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR
SRIVASTAVA**

and

**HONOURABLE MR. JUSTICE RAJENDRA KUMAR
MISHRA**

ORAL JUDGMENT

**(Per: HONOURABLE MR. JUSTICE HEMANT KUMAR
SRIVASTAVA)**

Date : 30-11-2018

Heard learned counsel for the appellant as well
as the learned Additional Public Prosecutor for the State on the
point of admission.

2. This criminal appeal has been preferred
against the Judgment of conviction and sentence order dated
05.05.2018 passed by the learned Additional Sessions Judge-III,
Katihar, in Sessions Trial No.85 of 2015, by which and
whereunder he convicted the appellant for the offence
punishable under Section 302 read with Section 149 of the
Indian Penal Code and sentenced him to undergo rigorous



imprisonment for 10 years and also to pay a fine of Rs.5000/- for the offence punishable under Section 302 read with Section 149 of the Indian Penal Code and, in default of payment of fine, the appellant has to go further imprisonment for six months, whereas co-convict Bishundeo Mandal was acquitted of the charges framed against him.

3. It is surprising enough that the learned trial court convicted the appellant for the offence punishable under Section 302 read with Section 149 of the Indian Penal Code but sentenced him to undergo rigorous imprisonment for 10 years and to pay fine of Rs.5000/-, which is contrary to the punishment prescribed under Section 302 of the Indian Penal Code.

4. Section 302 of the Indian Penal Code prescribes punishment of imprisonment for life or death.

5. It appears that the learned Additional Sessions Judge did not take pain even to go through Section 302 of the Indian Penal Code. Moreover, in the aforesaid circumstance, in our view, this appeal can be disposed of, directing the learned Additional Sessions Judge-III, Katihar, to pass a fresh sentence order after giving opportunity of hearing to the parties and, accordingly, only sentence order dated 05.05.2018 is set aside



and the matter is remitted to the learned Additional Sessions Judge-III, Katihar, to pass a fresh sentence order after giving opportunity of hearing to both the parties within four weeks from the date of receipt or production of copy of this Judgment

6. Accordingly, this appeal stands disposed of.

7. It is made clear that this Order/Judgment shall not prejudice to the appellant, if after a fresh sentence order, he challenges his conviction and sentence order.

(Hemant Kumar Srivastava, J)

(Rajendra Kumar Mishra, J)

**Pradeep
Srivastava/-**

AFR/NAFR	NAFR
CAV DATE	NA
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