

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.3683 of 2018

Arising Out of PS. Case No.-34 Year-1995 Thana- SANJHOLI District- Rohtas

Sita Ram Singh S/o Nand Lal Singh, R/o Vill.- Karma, P.S.- Sanjhauli,
District- Rohtas at Sasaram.

... .. Appellant/s

Versus

1. The State of Bihar.
2. Rajdeo Singh S/o Madho Singh,
3. Barun Singh S/o Keshri Singh,
4. Shambhu Singh S/o Bali Singh,
5. Sri Bhagwan Singh S/o Madho Singh, Respondent No. 2 to 5 are residents
Vill.- Karma, P.S.- Sanjhauli, District- Rohtas at Sasaram.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Raghunandan Kumar Singh

For the Respondent/s : Mr. Sri Abhay Kumar

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date : 13-12-2018

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

2. This appeal under the proviso to Section 372 of the
Code of Criminal Procedure (for short 'Cr.P.C') has been filed by
the appellant for enhancement of sentence awarded to respondent
nos. 2 to 5 by the Fast Track Court- 1st, Rohtas at Sasaram in
Sessions Trial No. 233 of 1997 arising out of Sanjhauli P.S.Case
No. 34 of 1995.

3. It is submitted by the learned counsel for the
appellant that the respondent nos. 2 to 5 were charged for the
offences punishable under Sections 307/149 of the Indian Penal
Code and 27 of the Arms Act. On completion of trial, they were
convicted by the trial court for both the offences vide impugned



judgment dated 09.04.2018. After convicting them, the trial court sentenced them to undergo R.I. for 3 years and a fine of Rs.5,000/- each for the offence under Section 307/149 of the Indian Penal Code and R.I. for 3 years under Section 27 of the Arms Act. In default of payment of fine, they were directed to undergo S.I. for two months each.

4. It is contended by the learned counsel for the appellant that the trial court has erred in law while sentencing the respondents nos.2 to 5. Though the charges were framed under serious offences and the prosecution proved those charges beyond doubt, the trial court took a lenient view. It ought to have awarded proper sentence. His contention is that the sentence of 3 years awarded by the trial court for each of the offences is not commensurate to the proved charges against the accused respondents.

5. On the other hand, learned counsel for the State submitted that the instant appeal is not maintainable in law. He contended that the proviso to Section 372 of the Cr.P.C does not confer any jurisdiction upon this Court to entertain an appeal against lesser punishment.

6. I have heard learned counsel for the parties and carefully perused the record.



7. The submission made by the learned counsel for the State appears to be correct. Earlier, the victim had no right to appeal against judgment or order of a criminal court except as provided by the Cr.P.C or any other law for the time being in force. But by way of Code of Criminal Procedure (Amendment) Act, 2008 (No.5 of 2009), with effect from 7th January, 2009, Section 372 relating to appeals from judgment and order of the trial court was amended and the victim was conferred with a right to prefer an appeal against any order passed by the court acquitting the accused or convicting for a lesser offence or imposing inadequate compensation.

8. At this stage, it would be apposite to reproduce Section 372 of the Cr.P.C.

“372. No appeal to lie unless otherwise provided. - No appeal shall lie from any judgment or order of a Criminal Court except as provided for by this Code or by any other law for the time being in force.

Provided that the victim shall have a right to prefer an appeal against any order passed by the Court **acquitting the accused or convicting for a lesser offence or imposing inadequate compensation**, and such appeal shall lie to the Court to which an appeal ordinarily lies against the order of conviction of such Court.”

(emphasis mine)



9. From a bare reading of the proviso to Section 372 of the Cr.P.C, it would be manifest that the victim has not been conferred with any right to prefer an appeal against lesser sentence. The right to appeal has been conferred upon the victim only in three circumstances, i.e.

(a) in case of acquittal;

(b) in case of inadequate compensation; and

(c) in case of conviction for lesser offence.

10. The instant appeal is neither against acquittal nor against conviction for lesser offence nor against imposition of inadequate compensation rather his grievance is against the lesser sentence awarded to the respondent nos.2 to 5 after holding them guilty which is beyond the scope of the right conferred to the victim under the proviso to Section 372 of the Cr.P.C.

11. Accordingly, the appeal is dismissed as not maintainable in law.

(Ashwani Kumar Singh, J)

Pradeep/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	
Transmission Date	

