

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.4152 of 2018

Arising Out of PS.Case No. -151 Year- 2010 Thana -CHANPATIA District-
WESTCHAMPARAN(BETTIAH)

- =====
1. Alamgir Miyan, Son of Late Salam Miyan,
 2. Serazul Miyan, Son of Md. Ali Miyan,
 3. Ayub Anasari @ Ayub Mian, Son of Serazul Mian,
 4. Id. Mohammad Miyan, Son of Serazul Miyan,

All are resident of Village- Khardeur Mahana Police Station- Chanpatia,
District- West Champaran.

.... Appellants

Versus

The State of Bihar.

.... Respondent

=====

Appearance :

For the Appellants : Mr. Lalan Kumar Verma, Advocate

For the Respondent : Mr. Binod Bihari Singh, APP

=====

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL ORDER

- 2 06-11-2018 Section 374 of the Code of Criminal Procedure lays down the forums for filing appeals by the accused against the order of conviction. Three different forums have been laid in respect of the trials held by different courts. If a trial is held by the High Court in its extraordinary original criminal jurisdiction, an appeal would lie against to the Supreme Court and not to a Bench of Judges of the High Court. If a trial is held by a Sessions Judge or an Additional Sessions Judge or by any other Court in which a sentence of imprisonment of more than seven years has



been passed, an appeal would lie to the High Court. If a trial is held by a Metropolitan Magistrate or Assistant Sessions Judge or Magistrate of the first or second class except cases falling under sub-section (2) or in cases falling under Sections 325 and 360, an appeal will lie to the Court of Session.

In the present case, the appeal has been filed against the judgment and order passed by the learned Additional Sessions Judge-V, West Champaran at Bettiah in which one of the under trial accused was convicted under Section 302 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for life.

In view of Section 374(2) of the Code of Criminal Procedure, an appeal against the impugned judgment would certainly lie before this Court.

However, the question is whether it would lie before the Single Judge or the Division Bench.

In this regard, one may refer to Chapter XII of the Rules of the High Court at Patna wherein the procedure in criminal cases has been incorporated. Rule 35 in Chapter XII provides that criminal appeals other than Jail appeals shall be presented in open Court. Rule 36 provides that Jail appeals may be received by post. It further provides that in the case of such appeals after the Trial Assistant has reported it whether it is



within time and admissible, the Registrar shall submit it with a copy of judgment or order appealed against to a Bench for orders. Proviso to Rule 36 provides that an appeal in which substantive sentence up to and inclusive of ten years has been passed shall be laid before a Single Judge for admission. All other appeals in which sentence is more than 10 years has to be laid before a Division Bench for admission.

In the present case, as one of the accused has been sentenced to life imprisonment, in the opinion of this Court, an appeal would lie before the Division Bench. It is immaterial that other accused persons have been awarded less than 10 years punishment. It is the maximum sentence awarded by the trial court after completion of the trial, which would be material for consideration as to whether the appeal would lie before the Single Judge or the Division Bench.

In that view of the matter, this appeal, which has been filed as single judge appeal, is not maintainable in law. It is disposed of, accordingly.

The appellants would be at liberty to file another appeal in the same subject matter before this Court in accordance with law before the Division Bench against the judgment impugned.



In case, the appellants supply Xerox copies of the impugned judgment and the order by which they have been granted provisional bail, the Registry shall return the certified copies to the learned counsel for the appellants after retaining Xerox copies on the record.

(Ashwani Kumar Singh, J.)

Kanchan/-

U		T	
---	--	---	--

