

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.605 of 2019

In
CRIMINAL APPEAL (SJ) No.718 of 2019

Arising Out of PS. Case No.-124 Year-2006 Thana- KARAHGAR District- Rohtas

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GAYA NARAIN PAHTHAK @ GAYA PATHAK Son of Late Nandji Pathak
Resident of Village - Baheri, P.S.- Kargahar (Sidhi O.P), Distt - Rohtas.

... .. Appellant/s

Versus

1. The State of Bihar Bihar
2. Shiv Mohan Pathak Son of Late Ekbal Pathak Resident of Village - Baheri, P.S.- Kargahar (Sidhi O.P), Distt - Rohtas.
3. Kamla Pathak Son of Ramayan Pathak Resident of Village - Baheri, P.S.- Kargahar (Sidhi O.P), Distt - Rohtas.
4. Yogesh Pathak Son of Shiv Mohan Pahtak Resident of Village - Baheri, P.S.- Kargahar (Sidhi O.P), Distt - Rohtas.
5. Ram Niwas Pathak Son of Ramayan Pathak. Resident of Village - Baheri, P.S.- Kargahar (Sidhi O.P), Distt - Rohtas.
6. Manoj Pathak Son of Bishwamitra Pathak Resident of Village - Baheri, P.S.- Kargahar (Sidhi O.P), Distt - Rohtas.
7. Satyendra Pathak Son of late Rajeshwar Pathak Resident of Village - Baheri, P.S.- Kargahar (Sidhi O.P), Distt - Rohtas.
8. Arun Pathak Son of Bishwamitra Pathak Resident of Village - Baheri, P.S.- Kargahar (Sidhi O.P), Distt - Rohtas.
9. Shivmuni Pathak Son of Late Ekbal Pathak Resident of Village - Baheri, P.S.- Kargahar (Sidhi O.P), Distt - Rohtas.

... .. Respondent/s

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Appearance :

For the Appellant/s	:	M/s Yogesh Chandra Verma, Sr. Advocate, Madhukar Pandey & Love Kush Kumar, Advocates
For the Respondent/s	:	Mr.Zeyaul Hoda, APP

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CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR
SRIVASTAVA

and

HONOURABLE MR. JUSTICE PRABHAT KUMAR SINGH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HEMANT KUMAR
SRIVASTAVA)

Date : 02-07-2019

Heard learned counsel appearing for appellant as well



as learned APP for State on I.A. No. 1 of 2019, which has been filed under Section 378(3) of the Cr.P.C. for grant of leave to file and pursue this criminal appeal and also on the point of admission.

I.A. No. 1 of 2019 has been preferred by appellant, who happens to be the informant of Karahgar P.S. Case No. 124 of 2006 and also injured and, therefore, he has statutory right to prefer the appeal.

However, the appellant has preferred this appeal challenging the acquittal of respondent Nos. 2 to 9 from the charge framed under Section 307/34 of the Indian Penal Code as well as inadequate sentence awarded to them by the trial court passing the impugned judgment.

Proviso of Section 372 of Cr.P.C. gives right to victim to prefer an appeal against any order passed by the Court acquitting the accused or convicting for a lesser offence or imposing inadequate compensation. The aforesaid proviso of Section 372 does not give right to victim to challenge the order of sentence and, therefore, the appellant can pursue this appeal only against the judgment of acquittal of respondent Nos. 2 to 9 from the charge framed under Section 307/34 of the Indian Penal Code.



Learned counsel appearing for appellant submits that the respondent Nos. 2 to 9 were charged for the offence punishable under Section 307 and other minor Sections of the Indian Penal Code but the learned trial court acquitted the respondent Nos. 2 to 9 from the charge framed under Section 307 of the Indian Penal Code on flimsy ground. He, further, submitted that, no doubt, proviso of Section 372 of the Cr. P.C. does not give right to victim to challenge the order of sentence but if the aforesaid proviso gives right to victim to challenge the order of acquittal, then the aforesaid right includes to challenge the order of sentence.

We are not in a position to accept the aforesaid contention of learned counsel of the appellant because conviction as well as sentence are two separate things and there is specific provision in Criminal Procedure Code to challenge the order of sentence. The legislature has given the aforesaid right to State under Section 377 of the Cr.P.C.

From perusal of the impugned judgment, we find that the learned trial court has discussed the prosecution evidence and also noticed the injuries found on the injured and after that came to conclusion that the prosecution could not succeed to prove the charge framed under Section 307 of the Indian Penal



Code, therefore, we do not find any illegality, perversity and absurdity in the impugned judgment and, as such, we are of the considered view that this criminal appeal has got no force and, accordingly, this criminal appeal stands dismissed at the admission stage itself.

(Hemant Kumar Srivastava, J)

(Prabhat Kumar Singh, J)

Spd/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	04.07.2019
Transmission Date	04.07.2019

