

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.1303 of 2018**

Arising Out of PS. Case No.-7 Year-2006 Thana- RAJPUR District- Buxar

Ram Nath Singh son of Late Ganga Singh resident of Village- Ismailpur, P.S.
Rajpur, District Buxar.

... .. Appellant

Versus

1. The State Of Bihar
2. Vishwanath Singh son of Fudan Singh
3. Bhola Singh son of Haridwar Singh
4. Rajgrihi Singh son of Mahesh Singh
5. Ramdayal Singh son of Manger Singh
6. Dayshankar Singh son of Vishwanath Singh
7. Tejbai Kushwaha son of Jeeta Singh
8. Ramashish Singh son of Toofani Singh
9. Diwaika Singh son of Ramnaresh Singh, All are resident of Village- Harpur,
P.S. Rajpur, District- Buxar.
10. Janardan Singh son of Jagnarayan Singh
11. Subash Singh son of Rajnarayan Singh Both resident of Village- Ismailapur,
P.S. Rajpur, District Buxar.

... .. Respondents

Appearance :

For the Appellant/s : Mr. Tushar Vaibhav
For the Respondent/s : Mr. Mayanand Jha

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

and

HONOURABLE MR. JUSTICE PARTHA SARTHY

ORAL ORDER

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

- 6 30-04-2019 1. Heard learned counsel appearing for the applicant
as well as learned Additional Public Prosecutor for the State on
I. A. No. 2 of 2019.
2. I. A. No. 2 of 2019 has been filed on behalf of legal



heir of appellant mentioning therein that during pendency of the appeal, sole appellant, namely, Ram Nath Singh died on 03.01.2019 leaving behind his legal heir as mentioned at para 2 of aforesaid I. A. No. 2 of 2019 and, accordingly, it is prayed that the name of sole deceased-appellant be expunged and in his place, the name of his legal heir be substituted so that the legal heir of original deceased-appellant could pursue this appeal.

3. The present appeal has been preferred by original appellant against impugned judgment dated 18.08.2018 passed by learned Additional Sessions Judge-VI, Buxar in Sessions Trial No. 136 of 2008 by which and whereunder, he acquitted the respondents no. 2 to 11 from the charges framed against them under Sections 342 and 307/149 of the Indian Penal Code. However, the learned trial court by the same impugned judgment convicted the co-accused Subhash Singh for the offences punishable under Sections 147, 148, 323/149, 379 of the Indian Penal Code.

4. The original appellant was informant as well as injured in Rajpur P. S. Case No. 7 of 2006 and being aggrieved by acquittal of respondents no. 2 to 11 preferred this criminal appeal but unfortunately, during pendency of this appeal he died.



5. Section 394 of the Criminal Procedure Code deals with abatement of appeals and runs as follows :-

(1) Every appeal under section 377 or section 378 shall finally abate on the death of the accused.

(2) Every other appeal under this Chapter (except an appeal from a sentence of fine) shall finally abate on the death of the appellant:

Provided that where the appeal is against a conviction and sentence of death or of imprisonment, and the appellant dies during the pendency of the appeal, any of his near relatives may, within thirty days of the death of the appellant, apply to the Appellate Court for leave to continue the appeal; and if leave is granted, the appeal shall not abate.

6. From bare perusal of sub-section 1 of Section 394 of the Code, it is clear that every appeal under Section 377 or Section 378 shall finally abate on the death of the accused and furthermore, sub-section 2 of Section 394 says that every other appeal under this chapter (except an appeal from a sentence of fine) shall finally abate on the death of the appellant. However, the proviso of the aforesaid Section 394 goes to show that the near relatives of appellant, who files appeal against conviction and dies during pendency of appeal, has right to get themselves



substituted in place of original appellant but the aforesaid proviso speaks only in respect of appeal filed against conviction not against the acquittal. Therefore, it is clear that there is no provision for substitution of appellant in the case of acquittal and sub-section (2) of Section 394 of Cr. P. C. clearly bars the substitution of appellant in case of death of appellant.

7. Therefore, in the aforesaid circumstance, we do not find any merit in I. A. No. 2 of 2019 and, accordingly, I. A. No. 2 of 2019 stands rejected.

8. Since the sole appellant has already died during pendency of this appeal, the present appeal stands abated.

(Hemant Kumar Srivastava, J)

(Partha Sarthy, J)

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