

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLA No.615 of 2020

Surendranath Acharya* *Appellant

Mr. Ramani Kanta Pattanaik,
R.R. Rout, M. Routray

-versus-

1. State of Odisha

2. Rakesh Kumar Beura* *Respondents

Mr. J.P. Patra,
Addl. Standing Counsel

**CORAM:
JUSTICE S.K. SAHOO**

**ORDER
04.04.2022**

Order No.

03. This matter is taken up through Hybrid arrangement (video conferencing/physical mode).

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

In this appeal under the proviso to section 372 of Cr.P.C, the appellant Surendranath Acharya, the victim has challenged the impugned judgment and order of acquittal dated 19.10.2020 passed by the learned C.J.M. -cum- Asst. Sessions Judge, Jagatsinghpur in C.T. Case No.83 of 2014 in acquitting the respondent no.2 Rakesh Kumar Beura of the charge under section 307 read with section 34 of the Indian Penal Code.

The proviso to section 372 of Cr.P.C. reads as follows:-

“372.No appeal to lie unless otherwise provided.-

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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.”

Sub-section (2) of section 374 of Cr.P.C. which deals with appeal from conviction states that any person convicted on a trial held by a Sessions Judge or an Addl. Sessions Judge or on a trial held by any other Court in which a sentence of imprisonment for more than seven years has been passed against him or against any other person convicted at the same trial, may appeal to the High Court. Therefore, only against the impugned judgment and order of conviction passed by the Sessions Judge or the Addl. Sessions Judge or any other Court including the Asst. Sessions Judge where more than seven years of sentence of imprisonment has been awarded against an accused or any co-accused facing the same trial, an appeal can be preferred in the High Court otherwise the appeal against the judgment and order

of conviction passed by the Asst. Sessions Judge or any other Court in which sentence imposed is for seven years or less will lie to Sessions Judge. Therefore, in my humble view, this appeal which has been filed under the proviso to section 372 of Cr.P.C. is not maintainable before this Court.

The appellant, if he is so advised can prefer an appeal in the Court of learned Sessions Judge, Jagatsinghpur within a period of two weeks from today and if any application for condonation of delay is filed along with the appeal, the same shall be considered by the Appellate Court taking into account the provision under section 14 of the limitation Act.

The CRLA is accordingly disposed of.

The certified copy of the impugned judgment be returned to the learned counsel for the appellant.

(S.K. Sahoo)
Judge