

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.417 of 2009

1. Chamru Bishwash, son of Gaisal Bishwash
2. Jagdish Bishwash, son of Gaisal Bishwash
Both resident of Village- Baduabari, Police Station- Kadwam District- Katihar

... .. Appellants

Versus

The State of Bihar

... .. Respondent

Appearance :

For the Appellants : Mr. Bimal Kumar, Advocate
For the Respondent/s : Smt. Shashi Bala Verma, A.P.P.

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL ORDER

(Per: HONOURABLE THE CHIEF JUSTICE)

3 26-05-2026 Perused the report dated 04.05.2026 of the Superintendent of Police, Katihar along with the report dated 03.05.2026 of the Police Inspector-cum-S.H.O., Kadwa Police Station, Katihar, which indicate that both the appellants Chamru Bishwash and Jagdish Bishwash are dead.

2. In view of the said reports as also section 394 of the Code of Criminal Procedure, 1973, which corresponds to section 435 of the Bharatiya Nagarik Suraksha Sanhita, 2023, since no near relative has filed any application for leave to continue the appeal and having regard to the settled position of



law as enunciated by the Hon'ble Division Bench of the High Court of Judicature at Allahabad in ***Santosh Kumar Baranwal v. State of UP, reported in 2010 SCC OnLine All 974***, wherein it has been categorically held that upon conviction under Section 302 of the Indian Penal Code, 1860, the imposition of fine is discretionary in nature and does not partake the character of a mandatory requirement, and the legal position affirmed by the Hon'ble Division Bench of the High Court of Judicature at Bombay in ***Gopala Balu Kamble v. State of Maharashtra, reported in 2011 SCC OnLine Bom 1290*** being in consonance therewith, and whereas the appellants have since expired during the pendency of the present appeal and the conviction sought to be assailed pertains to the year 2009, and the State does not intend to pursue the recovery of the fine amount as imposed by the learned Trial Court, this Court, upon due consideration of the aforesaid facts, circumstances and settled legal position, hereby sets aside the order of imposition of fine passed by the learned Trial Court, and since the appeal insofar as it pertains to the sentence of imprisonment stands abated consequent upon the demise of the appellants, the present appeal is disposed of as having abated in its entirety.

3. Let the trial court record be sent back to the



concerned court immediately, if not required in any other case.

(Sangam Kumar Sahoo, CJ)

(Harish Kumar, J)

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