

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.216 of 2011**

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Dwarika Mahto Son Of Late Chamari Mahto Resident Of Village Jaitiya,
Police Station Khudaganj, District Nalanda Appellant/s
Versus

The State of Bihar Respondent/s

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Appearance :

For the Appellant/s : Mr. Tej Narayan Singh, Advocate
For the Respondent/s : Mr. Sujit Kumar Singh, A.P.P.

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

(Per: HONOURABLE THE CHIEF JUSTICE)

3 26-05-2026 Perused the Letter No. 1496 dated 16.05.2026 of the Superintendent of Police, Nalanda along with the Report dated 16.05.2026 of the S.H.O, Khudaganj Police Station, Nalanda, wherein it is indicated that during enquiry it came to light that the sole appellant, namely, Dwarika Mahto, is dead.

2. In view of the said letter 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 -Vrs.- 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 -Vrs.- State of Maharashtra, reported in 2011 SCC OnLine Bom 1290*** being in consonance therewith, and whereas the appellant has since expired during the pendency of the present appeal and the conviction sought to be assailed pertains to the year 2011, 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 appellant(s), the present appeal is disposed of as having abated in its entirety.

3. Let the trial court records be sent back to the concerned court immediately, if not required in any other cases.

(Sangam Kumar Sahoo, CJ)

(Harish Kumar, J)

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