
(2020) 02 PAT CK 0047

In the Patna High Court

Case No : Criminal Appeal (DB) No. 435 Of 2019 In SLA No. 56 Of 2018

Braj Bhushan Jha

APPELLANT

Vs

State Of Bihar And Anr

RESPONDENT

Date of Decision : 04-02-2020

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 325, 360, 372, 374(2), 374(3)
Indian Penal Code, 1860 — Section 34, 307

Citation : (2020) 02 PAT CK 0047

Hon'ble Judges : Ashwani Kumar Singh, J; Partha Sarthy, J

Bench : Division Bench

Advocate : Ramakant Sharma, Lakshmi Kant Sharma, Rajesh Kumar, Binod Bihari Singh, Vikram Deo Singh, Madhubala Verma

Final Decision : Dismissed

Judgement

1. Heard Mr. Ramakant Sharma, learned Senior Advocate appearing on behalf of the appellant and Mr. Vikram Deo Singh, learned advocate

appearing for the respondent no. 2.

2. This appeal under the proviso to Section 372 of the Code of Criminal Procedure (for short "Cr.P.C.") has been filed on behalf of the appellant

challenging the judgment dated 24.09.2018 passed by the learned Assistant Sessions Judge-II, Sitamarhi in Sessions Trial No. 295 of 2015 arising out

of Riga P.S. Case No. 21 of 2014 whereby the respondent no. 2 has been acquitted from the charge under Section 307 read with 34 of the Indian

Penal Code.

3. A preliminary objection has been raised by Mr. Vikram Deo Singh, learned advocate appearing for the respondent no. 2 regarding maintainability of

the present appeal before this Court. He has contented that since the trial was

held by the court of Assistant Sessions Judge and the trial court has acquitted the respondent no. 2, an appeal under proviso to Section 372 of the Cr.P.C would lie before the Sessions Court and not before this Court.

4. The plea advanced on behalf of the respondent no. 2 has been contested by Mr. Ramakant Sharma, learned senior advocate appearing for the appellant. He contended that in view of the provisions prescribed under sub-section (2) of Section 374 of the Cr.P.C an appeal against the judgment of acquittal passed by the court of Assistant Session Judge in respect of an offence punishable under Section 307 of the Indian Penal Code would lie before this Court and not before the court of sessions.

5. We have heard the parties and perused the relevant provisions of the Cr.P.C.

6. Chapter XXIX of the Cr.P.C, which deals with appeal(s). Section 372 of the Cr.P.C specifically provides that no appeal shall lie from the judgment or order of a criminal court except as provided by the Cr.P.C or by any other law which authorizes an appeal.

7. The proviso inserted in Section 372 of the Cr.P.C by Act 5 of 2009 with effect from 31.12.2009 gives a limited right to the victim to file an appeal in the High Court against any order passed by the court acquitting the accused or convicting for a lesser offence or imposing inadequate compensation.

The proviso further provides that such an appeal shall lie to the court to which an appeal ordinarily lies against the order of conviction of such court.

8. Section 374 (2) of the Cr.P.C provides that any person convicted on a trial held by a Sessions Judge or an Additional 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.

9. Sub-section (3) of Section 374 of the Cr.P.C provides that save as otherwise provided in sub-section (2) any person convicted on a trial held by a Metropolitan Magistrate or Assistant Sessions Judge or Magistrate of 1st Class or of the 2nd Class or sentenced under Section 325 or in respect of whom an order has been made or a sentence has been passed under Section 360 by any Magistrate may appeal to the Court of Sessions.

10. Thus, if the proviso to Section 372 and Sub-section (2) and (3) of Section 374 of the Cr.P.C are read together, it would be manifest that in case of a trial held by an Assistant Sessions Judge in which a sentence of imprisonment

of seven years or less than seven years is passed, the appeal would lie before the Court of Sessions and not before the High Court.

11. As the respondent no. 2 has been acquitted and no sentence has been passed against her, in our opinion, the appeal would be maintainable before the Court of Sessions and not before this Court. Accordingly, the appeal is dismissed as not maintainable.

12. However, if so advised, the appellant would be at liberty to file an appeal against the impugned judgment of acquittal before the Sessions Judge and, in case, an appeal is filed within 30 days from today, the court of Sessions shall consider the appeal on merits after condoning the delay as the appeal has been filed before this Court under an erroneous legal advice.