
(2011) 09 PAT CK 0057
In the Patna High Court
Case No : Cr. Rev. No. 1235 of 2007

Surya Kant Jha

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 07-09-2011

Acts Referred:

Citation : (2011) 09 PAT CK 0057

Final Decision : Allowed

Judgement

Amaresh Kr. Lal, J.—The informant-petitioner has preferred this revision application against the order dated 14.6.2007 passed by the learned Additional Sessions Judge, F.T.C. -V, Saharsa in Cr. Appeal No. 14/03 by which the order of conviction passed in S. Tr. No. 1.3/94 has been confirmed, but the sentence has been set aside and the case has been remanded back to the learned trial court for passing proper order u/s 360 Cr. P.C.

2. Heard Mr. Atul Kumar Pandey, learned counsel for the petitioner, Mrs. I.B. Pandey, learned A.P.P. for the State and Mr. Pramod Mishra, learned counsel for the opposite party nos. 3 to 5.

3. It is submitted by the learned counsel for the petitioner that the accused opposite party nos. 2 to 5 were convicted u/s 307/34 of the I.P.C. and were sentenced to undergo rigorous imprisonment for four years with a fine of Rs. 2,500/- payable to the injured and in default of payment of fine to undergo simple imprisonment for one month, the accused opposite party no. 2 was further convicted under Sections 326 and 324 of the I.P.C. and sentenced to undergo rigorous imprisonment for three years u/s 326 of the I.P.C. and a fine of Rs. 3,000/- payable to the injured and in default of fine undergo simple imprisonment for a period of two months and was also sentenced to undergo simple imprisonment for a period of one year u/s 324 of the I.P.C. and all the sentences to run concurrently. This order was passed by the learned Assistant Sessions Judge, Saharsa in S. Tr. No. 13/94. Against that judgment and order, the accused opposite parties preferred Cr. Appeal No. 14/ 03 in the court of

learned Sessions Judge, which has been heard by the learned Additional Sessions Judge, F.T.C.-V, Saharsa and has confirmed the judgment of the conviction passed by the learned trial court, but the sentence part has been set aside and the case has been remanded to the learned trial court for passing proper order u/s 360 Cr. P.C.

4. The learned counsel for the petitioner further submits that the provision u/s 360 Cr. P.C. is not applicable in case of the offence punishable under Sections 307 and 326 of the I.P.C. in which the offence is punishable for more than seven years. All the convicts are aged more than 21 years and all are males. During the pendency of this application, the opposite party no. 2 has died and his name has been deleted.

5. The learned counsel for the opposite parties submits that the accused have been convicted and sentenced to rigorous imprisonment for four years u/s 307 of the I.P.C. and one of the accused have been convicted and sentence to rigorous imprisonment for three years u/s 326 of the I.P.C. Since, the sentence is less than seven years, as such, the provision u/s 360 Cr. P.C. is applicable in this case and the learned appellate court has rightly remanded the case to the learned trial court for passing proper order u/s 360 Cr. P.C., setting aside the sentence. In support of his contention, he has referred to a decision in the case of Ved Prakash Vs. State of Haryana, equivalent to 1981 Cr. Law Journal 161.

6. It appears from the abovesited decision that the accused was less than 21 years of age and secondly the offence was committed under the Arms Act. There was no conviction u/s 307 or u/s 326 of the I.P.C. It appears from the case in hand that all the accused are above 21 years of age and all are males. The offence has been committed and accused have been convicted under Sections 307 and 326 I.P.C. The offences under Sections 307 and 326 I.P.C. are punishable for imprisonment for ten years and fine; or imprisonment for life. The provision u/s 360 Cr. P.C. is not applicable in this case. As such, the aforesaid decision is not helpful to the accused-convict-opposite party.

7. Considering the facts and circumstances stated above, in my opinion, the impugned order passed by the learned Additional Sessions Judge does not appear to be correct and is not sustainable. Part of the order by which the sentence has been set aside and the case has been remanded to the learned trial court for passing proper order u/s 360 Cr. P.C. is set aside. The matter is remanded to the learned appellate court for passing fresh order so far the sentence part is concerned in accordance with law.

8. In the result, this application is allowed.