IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.1024 of 2023
In
CRIMINAL APPEAL (SJ) No.1451 of 2023

Arising Out of PS. Case No.-306 Year-2017 Thana- NATHNAGAR District- Bhagalpur

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Santosh Yadav and another

... ... Appellant/s

Versus

The State of Bihar

... ... Respondent/s

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Appearance :

For the Appellant/s : Mr. Manoj Kumar Jha, Advocate

For the Respondent/s : Mr. Zeyaul Hoda, APP

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
and
HONOURABLE MR. JUSTICE NANI TAGIA

ORAL ORDER

(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

4 15-01-2024 Though the appellants have been convicted under Section 302/34 of the IPC but surprisingly they have been sentenced to undergo R.I. for ten years and to pay a fine of Rs. 20,000/-.

2. There cannot be any sentence of less than life in a conviction under Section 302 of the IPC.

3. We do not know whether it was an inadvertent mistake.

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4. Remanding the case back to the Trial Court would not serve the purpose as the Trial Court has become functus officio. The other option for this Court is to admit this appeal and to issue a notice to the appellants for enhancement of the sentence. That may not be necessary in case we ultimately find the conviction to be unmerited.

5. Since the appellants have preferred an appeal against the aforenoted judgment of conviction and sentence, we need to admit it before taking any further corrective measures.

6. Admit.

7. Call for the Lower Court Records in connection with S.T. No.973 of 2017/ Trial No.213 of 2022 arising out of Nathnagar (Lalmatia) P.S. case No.306/2017 from the court of Additional District & Sessions Judge-V, Bhagalpur.

8. Put up this matter on receipt of the same on 4th of March, 2024.

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9. It would only be then that we would consider the feasibility of issuing any notice of enhancement of sentence to the appellants or remitting the case to the Trial Court for writing out a fresh judgment with appropriate sentence.

(Ashutosh Kumar, J)

(Nani Tagia, J)

Narendra/-

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