

Criminal Appeal (SJ) No. 298 of 2006

(Against the judgment of conviction and order of sentence dated 17.02.2006 passed by Sunil Kumar Singh, Additional Sessions Judge, Fast Track Court-VII, Giridih in Sessions Trial No.100 of 2004)

1. Niranjan Kumar Rai

2. Pintu Kumar Rai

... .. Appellants

Versus

The State of Jharkhand

... .. Respondent

For the Appellants : Mr. Vijay Kumar Roy, Adv.

For the State : Mr. Sardhu Mahto, A.P.P.

PRESENT

HON'BLE MR. JUSTICE RAJESH KUMAR

The matter was taken up through Video Conferencing. Learned counsels for the parties had no objection with it and submitted that the audio and video qualities are good.

I.A. No. 2216/2020

The instant interlocutory application has been filed for recall/modification of the order dated. 09.01.2020.

Since the appeal is being heard finally today, learned counsel for the appellant prays for withdrawal of the same.

Prayer is allowed.

Accordingly, I.A. No. 2216 of 2020 is dismissed as withdrawn.

Criminal Appeal (SJ) No. 298 of 2006

This appeal is directed against the judgment of conviction and order of sentence dated 17.02.2006 passed by Sunil Kumar Singh, Additional Sessions Judge, Fast Track Court-VII, Giridih in Sessions Trial No.100 of 2004 whereby and whereunder the appellant no. 1, Niranjan Kumar Rai has been convicted for the offence under Sections 225, 323, 353 and 332 of the Indian Penal Code and appellant no. 2, Pintu Kumar Rai has been convicted for the offence under Sections 224, 353 and 323 of the Indian Penal Code and appellant no. 1, Niranjan Kumar Rai has been sentenced to undergo one year for the offence under Section 225 of the Indian Penal Code with fine of Rs. 500/-, R.I. for two years for the offence under Section 332 of the Indian Penal Code with fine of Rs. 500/-, R.I. for one year for the offence under Section 353 of the Indian Penal Code with fine of Rs. 500/- and for six months for the offence under Section 323 of the Indian Penal Code with fine of Rs. 500/- and appellant no. 2, Niranjan Kumar Rai has been sentenced to R.I. for one year for the offence under Section 224 of the Indian Penal Code with fine of Rs. 500/-, R.I. for one year for the offence under Section 353 of the Indian Penal Code with fine of Rs. 500/- and for six months for the offence under Section 323 of the Indian Penal Code with fine of Rs. 500/-. All the sentences were directed to be run concurrently.

2. During pendency of the present appeal, the appellant no. 1, Niranjan Kumar Rai died on 15.02.2009. This fact has been brought on record by filing counter affidavit by the State.

3. As per the prosecution story, the present appellant, Pintu Kumar Rai has been arrested in connection with some other case and was in jail. When the appellant, Pintu Kumar Rai was taken away to Court from jail, the appellant no. 1, Niranjan Kumar Rai, who was the elder brother of the appellant no. 2, intervened and tried to pick up quarrel with the officials and tried to free his younger brother namely Pintu Kumar Rai.

4. On the basis of the above prosecution story, Giridih (M) P. S. Case No. 347 of 2001 has been registered. Police after completed investigation has submitted charge sheet against the appellants under Sections 341/323/332/333/353/307/224/225/34 of the Indian Penal Code to which cognizance has been taken and the case has been committed the Court of Sessions. Charge has been framed against both these appellants under Sections 307/34, 323/34 and 353/34 of the Indian Penal Code and against Niranjan Kumar Rai, under Section 341/332/225 of the Indian Penal Code and against Pintu Kumar Rai under Section 224 of the Indian Penal Code also. The charge has been read over and explained to the accused/appellants to which they pleaded not guilty and claimed to be tried.

5. Being aggrieved, the present appeal has been filed.

6. To substantiate the charges, altogether seven witnesses have been examined. P. W. 1, Kameshwar Kumhar, P. W. -2, Murli Gop, P. W. -3, Ramswarup Prasad, P. W. -4, Shyam Kumar Sharma @ Shyam Sunder, P. W. -5, Md. Anwar, P. W. 6, Narendra Shankar, Investigating Officer and P. W. -7, Dr. K. Kumar.

7. From perusal of the prosecution witnesses, it appears that the allegation against, Pintu Kumar Rai, the present appellant that he has tried to flee away from the police custody while his elder brother has picked up quarrel with the officials.

8. It has been submitted by the learned counsel for the appellant that appellant no. 1, Niranjan Kumar Rai has already died. It has been argued by the learned counsel for the appellant that the main allegation is against the appellant no. 1, the elder brother of the appellant no. 2, Pintu Kumar Rai and further the appellant no. 2, Pintu Kumar Rai has already been in custody for about 107 days i.e. more than three months and as such, prayer has been made for modification of the order of sentence by reducing the period of custody already undergone by Pintu Kumar Rai. It has been submitted that the incident is of the year 2001 and the order of conviction has been passed in the year 2006 and the appeal is being heard in the year 2020 and further the appellant no. 2 Pintu Kumar Rai has remained in custody during trial for 26 days and further he surrendered on 20.06.2020 and since then he is in custody.

8. Counsel for the State has opposed the prayer.

9. Perused the record.

From perusal of the record, it appears that the witnesses have supported the prosecution story. Injury of the officials has been proved by the doctor. There is enough material justifying the conviction of the appellants and as such requires no interference. Accordingly, the judgment of conviction dated 17.02.2006 passed by Sunil Kumar Singh, Additional Sessions Judge, Fast Track Court-VII, Giridih in Sessions Trial No.100 of 2004 is, hereby, confirmed. So far as the sentencing part of the appellant no. 2, Pintu Kumar Rai is concerned, it is modified to the extent that his sentence is reduced to the period already undergone by considering the fact that he is in custody for more than three months and the incident is of the year 2001 and he has remained in custody twice i.e 26 days in the year 2001 and 81 days in the year 2020. So far as appellant no. 1, Niranjana Kumar Rai is concerned, he has already died so his sentencing part has become redundant and fine part is upheld.

10. With the above modification, the instant Appeal stands partly allowed.

(Rajesh Kumar, J)

Jharkhand High Court at Ranchi
The 11th day of September, 2020
kamlesh/NAFR/