

Sk. Abdul Halim @ Sk. Halim and Others Vs. the State of Bihar

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Court : Patna

Decided On : Mar-12-2014

Judge : Dharnidhar Jha

Appeal No. : Criminal Appeal (SJ) No. 256 of 1997

Appellant : Sk. Abdul Halim @ Sk. Halim and Others

Respondent : The State of Bihar

Judgement :

1. This appeal had appeared before this Bench on the 10th of March, 2014 and finding that the parties who were own brothers and nephews between them had decided to compromise the offence, the Court had directed the listing of the appeal today so that the parties could be in a position to take steps for filing necessary petitions.

2. Three petitions have been filed today. The first is by way of informing the Court that appellant no. 4, namely, Shakil Ahmad @ Sk. Shakil had died. The affidavit has been sworn by appellant no. 6, namely, Sk. Md. Mustafa @ Sk. Mustafa who happened to be the very family member of the deceased appellant. In view of the affidavit and the information, the appeal as for appellant no. 4 Shakil Ahmad @ Sk. Shakil stands abated. The appeal now survives only for appellant nos. 1, 2, 3, 5 and 6.

3. Appellant nos. 1, 2, 3 and 5 have been convicted under Sections 147 and 323 of the Indian Penal Code and have been directed to undergo rigorous imprisonment for six months each under Section 147 and for one year each under Section 323 of the Indian Penal Code. As regards appellant no. 6, he has been convicted under Sections 148 and 324 of the Indian Penal Code and has been directed to suffer rigorous imprisonment for one year and three years respectively on the two counts of his conviction. Offence under Section 323 of the Indian Penal Code is compoundable but in an appeal the same offence may be compounded with the permission of the Court as may also be the case as regards conviction of appellant no. 6 under Section 324 of the Indian Penal Code. The appellants had filed a petition signed by both the parties seeking the leave of the Court to allow them to compound the offences as is required by Section 321 (5) of the Code of Criminal Procedure. This Court, finding that good relationship has been restored and the parties are living amicably as brothers or nephews and there is no ill-will or grudge existing between them, does not see any reason to refuse the leave. The leave of this Court to compromise the offences is hereby granted.

4. On account of the grant of leave and also due to the fact that the offences under Sections 323 and 324 of the Indian Penal Code are compoundable, the result of the compromise petition has to be that the accused persons stand acquitted. However, the offences under Sections 147 and 148 of the Indian Penal Code are not compoundable, as may appear from the very two tables which appear in Section 320 sub-section (2) of the Code of Criminal Procedure. But, the settled principle of law is that as soon as the accused persons are acquitted of the major offence or the principal offence, the common object of the unlawful assembly vanishes as a result of which there could not be any conviction of accused persons for being members of an unlawful assembly because an unlawful assembly is an assemblage of five or more persons with a particular common object as appears from the definition of the term as per Section 141 Indian Penal Code. In that view of law, appellant nos. 1, 2 3 and 5 stand acquitted under Section 147 of the Indian Penal Code as could be the case also with appellant no. 6 as regards his conviction under Section 148 of the Indian Penal Code.

5. In the result, the appeal is allowed. The judgment of conviction and the order of sentence are hereby set aside due to the reasons just assigned. The appellants are acquitted of the charge they had been found guilty of. The appellants who are on bail shall stand discharged from the liabilities of their respective bonds.

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