

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Revision No.538 of 2016

Arising Out of PS.Case No. -null Year- null Thana -null District- ARRARIA

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1. Md. Tahir, son of Late Sakalu
2. Md. Arfin @ Chulhai, son of Late Enamul
3. Md. Kalim, son of Late Istaf Ali

All are resident of village Tola Thariya (Doaria) Bakia, Police Station simraha,
District Araria

.... Petitioners

Versus

The State of Bihar

.... Respondent

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Appearance :

For the Petitioners : Mr. Anil Prasad Singh, Advocate

For the Respondent : Ms. Madhuri Lata, APP

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

JUDGMENT AND ORDER

ORAL

Date: 24-11-2016

This criminal revision application, under Section 397 read with Section 401 of the Code of Criminal Procedure, 1973, has been preferred against the judgment and order, dated 07.04.2016, passed, by learned Additional Sessions Judge I, Araria, in Criminal Appeal No. 93 of 2009, whereby he has affirmed the conviction of the petitioners under Sections 323 and 452 read with Section 34 of the Indian Penal Code, as recorded by the learned Judicial Magistrate, 1st Class, Araria, in G. R. No. 840 of 1994 (T. R. No. 1005 of 2009).

2. The learned Appellate Court, by the impugned judgment and order, has acquitted the petitioners of the



charge punishable under Section 380 read with Section 34 of the Indian Penal Code in respect of which also, the petitioners were convicted by the learned Trial Court. The learned Trial Court after having held the petitioners guilty of the offences punishable under Section 452, 380, 447 and 323 read with Section 34 of the Indian Penal Code, had sentenced them to undergo imprisonment for a period of three years each for the offences punishable under Sections 452 and a fine of Rs. 2,000/- each, for each of the said offences, and in default of payment of fine, the petitioners were required to undergo imprisonment for a further period of three months. The sentences were ordered to run concurrently. For the offence punishable under Section 380 of the Indian Penal Code, the learned Trial Court had sentenced them to undergo three years imprisonment and for the offence punishable under Section 323 of the Indian Penal Code, imprisonment for a period of one year, each.

3. As has been noted above, the learned Appellate Court acquitted the petitioners of the offence punishable under Section 380 read with Section 34 of the Indian Penal Code. The learned Appellate Court, however, did not interfere with the conviction of these petitioners under Sections 452 and 323 read with Section 34 of the Indian Penal Code and the period of imprisonment and fine.

4. Heard learned Counsel for the petitioners and the learned Additional Public Prosecutor appearing on behalf of the State.

5. Learned Counsel for the petitioners, after having realized that the concurrent findings of facts recorded by the Courts below of conviction of the petitioners of the offence punishable under Section 452 and 323 read with Section 34 of the Indian Penal Code cannot be assailed successfully in the present criminal revision application, has confined his submission to the quantum of punishment.

6. Learned Counsel for the petitioners has submitted that since the petitioners have been acquitted of the charge punishable under Section 380 read with Section 34 of the Indian Penal Code, the very motive for the petitioners to commit house trespass vanishes and, therefore, a lenient view may be taken. He has also submitted that since the petitioners are 65 years of age and they have been facing trial since 1994, a sympathetic approach may be adopted in the matter of awarding sentence. It has also been stated that the petitioners are in judicial custody since 06.05.2015.

7. Considering the facts and circumstances of the case and the submissions advanced on behalf of the petitioners, as noted above, the sentence of imprisonment of the petitioners is modified and reduced to the period of

custody already undergone by the petitioners.

8. Let the petitioners be released forthwith, if not wanted is any other case.

9. This application is, accordingly disposed of.

(Chakradhari Sharan Singh, J.)

Prabhakar Anand/-

AFR/NAFR	NAFR
CAV DATE	N.A.
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