

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Revision No.479 of 2016

Arising out of PS.Case No. 72 Year- 1999 Thana Banmankhi District- PURNIA

- =====
1. Shailendra Yadav @ Shailendra Kumar Yadav, son of late Mahadeo Yadav
 2. Birendra Yadav, son of late Mahadeo Yadav
 3. Adhyanand Yadav, son of late Baiju Yadav
- All residents of village Pipra, Police Station Banmankhi, District- Purnea.

.... Petitioners

Versus

The State of Bihar

.... Respondent

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Appearance :

For the Petitioners : Mr. Viveka Nand Singh, Advocate.
For the State : None.

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 27-10-2016

Heard learned counsel for the petitioner.

2. This revision application has been filed under Sections 397 and 401 of the Code of Criminal Procedure for setting aside the Judgment and order dated 3.2.2016 passed by the learned Sessions Judge, Purnea, in Cr. Appeal No. 142 of 2014/T.R. No. 153 of 2014 whereby he has dismissed the appeal filed by the petitioners and affirmed the judgment and order of sentence dated 5.11.2014 passed by the learned Sub Divisional Judicial Magistrate, Purnea, in G.R. No. 631 of 1999 corresponding to trial No. 625 of 2014 whereby the learned Magistrate has convicted the petitioners under Sections 323, and 384 of the Indian Penal Code and sentenced them



to undergo simple imprisonment for two years and simple imprisonment for four months respectively. The petitioner No. 1 has also been convicted under Section 341 of the Indian Penal Code and sentenced to undergo simple imprisonment for one month. However, the learned Magistrate has directed that the sentences would run concurrently.

3. According to the First Information Report lodged by Janardan Prasad Yadav, it is stated that on 22nd March, 1999 at 2:30 p.m. the informant along with his helper Laxman Paswan reached Middle School, Dhodhi Pipra, with sand loaded on his tractor trailer bearing Registration No. BR-11A 5530 and BR-11A 5591 respectively. While he was getting the sand unloaded with the help of labourers, the petitioners namely, Shailendra Yadav @ Shailendra Kumar Yadav, Birendra Yadav and Adhyanand Yadav along with four unknown persons came there forming an unlawful assembly being variously armed with pistol, lathi and danda. They abused the informant and asked him to leave his tractor and trailer at their door. The motive attributed for committing the alleged offence is said to be an ongoing dispute between the parties from before. It is also alleged that the petitioner Shailendra Yadav assaulted him with *Danda* and on the point of pistol deprived him of his vehicle. On the aforesaid statement of the informant, the Police registered

Banmankhi P.S. Case No. 72 of 1999 on 23rd March, 1999 under Sections 147, 341, 323, 379 and 504 of the Indian Penal Code and investigated the same. On completion of investigation, charge sheet was submitted against the accused persons under Sections 147, 323, 341, 379 and 504 of the Indian Penal Code.

4. After taking cognizance of the offences and after supplying the Police papers in terms of the provisions prescribed under Section 207 of the Code of Criminal Procedure, charges were framed against the petitioners for the offences punishable under Sections 147, 379 and 504 of the Indian Penal Code. Since the accused persons did not plead guilty, the trial commenced.

5. In course of trial, altogether nine witnesses were examined on behalf of the prosecution. They are; P.W. 1 Laxman Paswan @ Laxmi, P.W. 2 Randhir Yadav, P.W. 3 Dinesh Pawan, P.W. 4 Ramkeshwar Mandal, P.W. 5 Haribansh Yadav, P.W. 6 Dayanand Yadav, P.W. 7 Disel Rishi Deo, P.W. 8 Satya Deo Yadav and P.W. 9 Janardan Prasad Yadav, the informant of the case.

6. Certain documents were also proved during trial and were marked as Exhibits. The learned trial Magistrate has elaborately discussed the evidence of the witnesses examined on behalf of the prosecution in paragraphs 9 to 17 of the judgment, which are as under:

“9. P.W.1 is Laxman Pathak alias Laxmi. He has stated in his examination-in-chief that the occurrence is of more than two years ago. He was going with Janardan Yadav to Pipra school after loading sand on the tractor. When the tractor stopped at Pipra School, Shailendra Yadav, Adhyanand Yadav and Birendra came. Pistol was there in the hands of Shailendra and Adhyanand and Birendra was carrying “Lathi”. Shailendra Yadav put the pistol on Janardan Yadav. Adhyanand assaulted Janardan with slaps. Adhyanand and Shailendra hurled abuses by calling “Sale” and asked to unload the tractor and they said that they would take it their door. This witness has stated that when he was unloading the tractor, Janardan fled away. Prem, Nirmal and Narayan Sah also came there and called Shailendra. Shailendra again hurled abuse by calling “Sala” and asked to unload the tractor immediately. He also threatened to kill. This witness has further stated that Shailendra took them forcibly on the tractor to his door and tied them in “Guhel”. Shailendra was opening the “Diccy” of tractor but Prem asked him not to do so and took away the tractor somewhere else. This witness has stated that in the evening he asked the mother of Shailendra to untie him as he had to attend the call of nature upon which she untied him and he fled away. Later on he came to know that police had taken away the tractor to the police station. Shailendra was saying in the school that he had demanded the vehicle which was not given. He will extort.

This witness has stated in his cross-examination that Janardan Yadav is cousin of Shailendra Yadav. He has further stated that he reached the school with the tractor at 2:30 P.M. He has also stated that about 150 people were assembled in the “Gohel”

but nobody tried to untied him. He has stated that he cannot say the name of any person.

10. P.W.2 is Randhir Yadav. He has stated in his examination-in-chief that the occurrence is of two and half years ago of 4.30 P.M. He was at the door of Yoganand yadav. Prem was driving the tractor on which Shailednra yadav, Birendra yadav, Adhyanand Yadav, Nirmal Yadav, Narayan Sah were there. Tractor stooped at the door of Shailendra Yadav. Thereafter, they took the tractor to the northern side. Thereafter, tractor was stopped at the boring of Shailendra yadav. Prem and Shailendra opened the diccy of tractor and took out rinch etc. Thereafter they also took out self, battery and hood of the tractor and took away towards the house of Prem Kumar. This witness has stated that he also went behind the tractor and saw the entire occurrence. When the accused persons went away, he went near the tractor and found that the tractor was of Janardan yadav. The registration number of tractor was BR11A 5530 and the number of trailor was BR 11A 5531. Police had come near the vehicle. This witness has stated that later on he came to know that Shailendra, Prem and others used to demand "Rangdari" from Janardan and on account of non-payment of "Rangdari" they had abused Janardan and tied Laxman Paswan in the house. Janardan Yadav disclosed this.

This witness has stated in his cross-examination that it took two hours to the accused persons in opening the parts of the tractor. He has further stated that he went to the tractor alone and he disclosed Janardan that the accused persons have taken the parts of the tractor. He has stated that Birendra took the battery on his head. Prem Kumar took the hood of the vehicle.

Shailendra Yadav took the dynamo and Adhyanand Yadav took the self. He has further stated that Janardan in his cousin (Mouser brother). He has stated that he had seen the opening the parts of tractor from behind the tree.

11. P.W.3 is Dinesh Paswan. He has stated in his examination-in-chief that the occurrence is of 2-2½ years ago of 3 P.M. He was going to Mohania from his village. When he reached near the field of Pipra School, Shailendra Yadav, Nirmal Yadav, Adhyanand Yadav, Virendra Yadav, Premlal Sah, Narayan Sah were going on tractor towards East. Premlal was driving the tractor. Laxman Paswan was also on the tractor. Tractor was of Janardan Yadav. He had seen the tractor from the distance of 4-5 hands. He went to Mohania. This witness has further stated that on the next day when he returned from Mohania, he came to know from his brother Laxman that Shailendra and other accused persons were demanding extortion from Janardan Yadav. Therefore, they took away the tractor and opened the parts of the tractor and tied him and he fled away on the pretext of latrine.

This witness has stated in his cross-examination that he had gone to Mohania in the house of his aunt (Fua) who was ill. He has further stated that the school runs from 10 A.M. to 4 A.M. where people from nearby come to study.

12. PW.4 is Ram Keshwar Mandal. He has stated in his examination-in-chief that the occurrence is of 5-6 years ago of 2 P.M. He was in the house. The driver of the tractor of Janardan Yadav namely Laxman Paswan who is his co-villager disclosed him that when he was coming with sand on the tractor, his tractor was snatched. He did not say anything more. He had disclosed that Shailendra Yadav and his

associates had snatched the tractor.

P.W.4 has stated in his cross-examination that Laxman disclosed him at 4-5 P.M. He was passing by his door.

13. P.W.5 is Haribansh Yadav. He has stated in his examination-in-chief that the occurrence is of the year 1999 of 2.30 P.M. At that time he was near the school. Tractor of Janardan Yadav with sand of Contractor Dayanand Yadav reached the school. Prem Kumar Sah, Shailendra Prasad Yadav, Birendra Yadav, Narayan Sah reached near the vehicle and asked Janardan to unload the sand from the vehicle immediately. Janardan unloaded the sand immediately out of fear. Thereafter Prem Kumar Sah and others who were four in number took the vehicle to the door of Shailendra and did not return to Janardan. The vehicle was released from the Police Station and the vehicle is in possession of Janardan at present.

This witness has stated in his cross-examination that Janardan is his "Bhagina". He has further stated that his house is at a distance of one kilometre from the house of Janardan.

14. P.W.6 is Dayanand Yadav. He has stated in his examination-in-chief that he does not know anything about the incident. He has been declared hostile. In his cross-examination, this witness has denied the suggestion that he had given statement to the police.

15. P.W.7 is Disel Rishi Deo. He has stated in his examination-in-chief that he does not know anything about the occurrence. This witness has also been declared hostile. In his cross-examination, this witness has also denied the suggestion that he had given statement to the police.

16. P.W.8 is Satya Deo Yadav. He has stated in his examination-in-chief that he does not know anything about the

incident. He has been declared hostile. In his cross-examination this witness has also denied the suggestion that he had given statement to the police.

17. P.W.9 is the informant Janardan Prasad Yadav. He has stated in his examination-in-chief that the occurrence is of 22/3/99 of 2.30 P.M. He was getting the sand unloaded from the tractor in Middle School, Dhothai Pipra. The number of the tractor is BR 11A 5530 and the number of trailer is BR 11A 5531. Shailendra Yadav, Nityanand Yadav, Birendra Yadav came with others. Pistol was there in the hand of Shailendra and "Lathi" were there in the hands of others. The said that "Rangdari" had not been given and they would take the vehicle. They also started beating. Shailendra put pistol on him. They also assaulted Laxman Paswan. They took away the tractor and Laxman Paswan to their door. Gurudev, Heli, Durganand Yadav, Dayanand Yadav, Harbansh Yadav, Laxman Paswan and Dinesh Yadav witnessed the occurrence. This witness has proved his written application to the police which has been marked as Exhibit "I".

In his cross-examination, the informant has stated that "Jhanjhat" occurred within half an hour. People were there near the place of occurrence but they did not come. He has further stated that Shailendra Yadav is his cousin maternal uncle. He has stated that the distance in between his house and the house of Shailendra is two kilometre. He has denied the suggestion that prior to 7-8 days of this occurrence he and his brother Rudal had stolen the pump set of Shailendra and in the "Panchayati" he had promised to return the pump set but did not return it and has filed this false case."

7. On behalf of the defence, it was contended before the learned Magistrate that no independent witness had come forward to support the case of the prosecution and those examined on behalf of the prosecution are all interested and related witnesses. It was further contended that the testimonies of the witnesses suffered from vice of material contradiction. Hence, no reliance can be placed on their testimonies. It was also pleaded that non-examination of the Investigating Officer has seriously prejudiced the case of the defence and, hence, the accused persons are entitled to be acquitted.

8. After hearing the parties and carefully analyzing the evidence brought on record, the learned Magistrate has acquitted the accused persons of the charges under Sections 147, 379 and 504 of the Indian Penal Code. However, the learned Magistrate held that the accused persons are guilty of the charges under Sections 323 and 384 of the Indian Penal Code. The learned Magistrate also held the accused Shailendra Yadav guilty of the charge under Section 341 of the Indian Penal code.

9. The reasonings assigned for holding the petitioners guilty for the aforesaid charges have been discussed in paragraphs 23 to 27 of the impugned Judgment which are as under:

“23. So far as the charge under Section 147 of the Indian Penal Code is concerned although it is the case of the prosecution that the accused persons namely



Shailendra Yadav, Birendra Yadav and Adhyanand Yadav came with their 4 unknown associates but the police has submitted charge sheet only against the present three accused persons which shows that the name of four unknown associates of the present accused persons could not be traced out in course of investigation. P.W.1, Laxman Paswan alias Laxmi has stated in this respect in his evidence that Prem, Nirmal and Narayan Sah also came and called Shailendra. However, aforesaid Prem, Nirmal and Narayan Sah are not accused in this case and said P.W.1 has not stated about the fourth person. Similarly, P.W. 2 and P.W. 3 namely Randhir Yadav and Dinesh Paswan have stated the names of only Prem, Nirmal and Narayan Sah and they have also not stated about the fourth person. P.W.5 Haribans Yadav has stated in his evidence that Prem Kumar Sah, Shailendra Prasad Yadav, Birendra Yadav and Narayan Sah came. Therefore, this witness has stated only about four persons. PW.9, Janardan Prasad Yadav who is the informant of this case has although stated in his evidence that Shailendra Yadav, Nityanand Yadav, Virendra Yadav came with others but he has neither stated the names of other persons nor the numbers of other persons. Therefore, in my considered view, there are vital and major contradictions in the testimonies of the prosecution witness on the point that the present three accused persons who are facing trial namely Shailendra Yadav, Adhyanand Yadav and Birendra Yadav came with other persons. In my considered opinion, the testimonies of the prosecution witnesses are not sufficient enough to prove that the number of culprits at the place of occurrence is five or more than five and they formed an unlawful assembly. Accordingly, I find and held that the prosecution has failed to prove the

charge against the accused persons under section 147 of the Indian Penal Code beyond all reasonable doubts and the accused persons are entitled to be acquitted of the aforesaid charge.

24. So far as the charge under section 379 of the Indian Penal Code is concerned, from the perusal of the charge it transpires that the accused persons have been charged under the aforesaid section for committing theft of dynamo, battery and self of the tractor of the informant. It is not the case of the prosecution in the First Information Report that the accused persons took away the parts of the tractor of the informant. The informant namely Janardan Prasad Yadav (P.W.9) has also not stated in his evidence that the accused persons took away the parts of his tractor. PW.2 namely Randhir Yadav has stated in his evidence that Shailendra and Prem took out rinch from the diccky of the tractor and they also took away self, dynamo, battery, and hood of the tractor. This witness has stated in paragraph no. 7 of his evidence that he has disclosed to Janardan that the accused persons have taken the parts of the tractor but as stated above, the informant has not stated in his evidence that the accused persons took away the parts of this tractor. This fact has also not been mentioned in the F.I.R. whereas the First Information Report of this case has been lodged after one day of the occurrence. Had the witness Randhir Yadav disclosed about the theft of parts of tractor by the accused persons, this fact would have been mentioned in the First Information Report and the informant would have stated this fact in his evidence but as stated above, the fact of theft of parts of tractor is neither there in the First Information Report nor the informant has stated in his evidence that the accused persons took away the parts of his tractor.



Therefore, the evidence of P.W.2, Randhir Yadav is not believable on the point of theft of parts of tractor by the accused persons. P.W.3 namely Dinesh Paswan has also stated in his evidence that Laxman disclosed him that the accused persons took away the parts of the tractor but from the perusal of the testimony of said Laxman Paswan alias Laxmi (P.W.1), it transpires that he himself has not stated in his evidence that the accused persons took away the parts of the tractor. Therefore, testimony of P.W.3, Dinesh Paswan also cannot be believed that the accused persons took away the parts of the tractor. Apart from the aforesaid two witnesses no other witness including the informant Janardan Prasad Yadav (P.W.9) has stated in their evidences that the accused persons took away the parts of the tractor of the informant. Therefore, in view of the discussions made hereinabove I find and held that the prosecution has failed to prove the charge under section 379 of the Indian Penal Code beyond all reasonable doubts and the accused persons are entitled to be acquitted of the aforesaid charge.

25. So far as the charge under section 341 of the Indian Penal Code is concerned, it is the case of the prosecution in the First Information Report that the accused Shailendra Yadav put pistol on the informant. The informant namely Janardan Prasad Yadav (P.W.9) has stated in his evidence also that the accused Shailendra Yadav put pistol on him. This fact also finds corroboration from the testimony of P.W.1, Laxman Paswan alias Laxmi who has also stated in his evidence that the accused Shailendra put pistol on Janardan Yadav. From the perusal of the entire testimony including the cross-examination of the aforesaid witnesses i.e. the informant Janardan Prasad Yadav (P.W.9) and P.W.1 namely Laxman Paswan alias Laxmi, I find



nothing on the basis of which the fact of putting pistol by Shailendra Yadav on the informant Janardan Prasad Yadav can be disbelieved. Therefore, from the testimony of the informant Janardan Prasad Yadav and Laxman Paswan alias Laxmi, it is clear that the accused Shailendra Yadav put pistol on the informant and thus wrongfully restrained the informant. However, there is nothing in the testimonies of the prosecution witnesses to show that the other two accused persons namely Birendra Yadav and Adhyanand Yadav wrongfully restrained the informant. Therefore, in view of the discussions made hereinabove, I find and held that the prosecution has successfully proved the charge under section 341 of the Indian Penal Code against the accused Shailendra Yadav beyond all reasonable doubts and the accused Shailendra Yadav is the guilty of the charge under section 341 of the Indian Penal Code but the prosecution has failed to prove the charge under section 341 of the Indian Penal Code against the rest two accused persons namely Birendra Yadav and Adhyanand Yadav and both the said accused persons are entitled to be acquitted of the aforesaid charge under section 341 of the Indian Penal Code.

26. So far as the charge under section 504 of the Indian Penal Code against the accused persons is concerned, it is the case of the prosecution that the accused persons abused the informant. However, from the testimony of the informant namely Janardan Prasad Yadav (P.W.9) it transpires that he has not stated in his evidence that the accused persons abused him. Only P.W.1 namely Laxman Paswan alias Laxmi has stated in his evidence that the Shailendra and Adhyanand called the informant "Sala" but the testimony of P.W.1 in this respect does not find corroboration from the testimony of any other witness

including the testimony of the informant. Therefore, in view of the discussions made hereinabove, I find and held that the prosecution has failed to prove the charge under section 504 of the Indian Penal Code against the accused persons beyond all reasonable doubts and the accused persons are entitled to be acquitted of the charge under section 504 of the Indian Penal Code.

27. So far as the charges under sections 323 and 384 of the Indian Penal Code against the accused persons are concerned, it is the case of the prosecution that on 22/03/99 at 2.30 P.M. when the informant with his helper Laxman Paswan was getting the sand unloaded from his tractor bearing no. BR-11A-5530 and trailer no. BR-11A-5531 at Middle School Dothai Pipra, the accused persons namely Shailendra Yadav, Birendra Yadav and Adhyanand Yadav along with their four associates came there forming unlawful assembly armed with pistol, "lathi" and "Danda", abused the informant and asked him to keep the tractor at his door. Shailendra Yadav assaulted the informant with pistol and "Danda" and also put pistol on the informant and forcibly took away the tractor to their door.

The informant who has been examined as P.W.9 has stated in this respect in his evidence that the occurrence is of 22/03/99 of 2.30 P.M. He was getting the sand unloaded from the tractor in Middle School, Dhothai Pipra. The number of the tractor is BR 11A 5530 and the number of trailer is BR 11A 5531. Shailendra Yadav, Nityanand Yadav, Birendra Yadav came with others. Pistol was there in the hand of Shailendra and "lathi" were there in the hands of others. The said that "Rangdari" had not been given and they would take the vehicle. They also started beating. Shailendra put pistol on him. They also

assaulted Laxman Paswan. The testimony of the informant in this respect does find positive corroboration from the testimonies of P.W.1, Laxman Paswan alias Laxmi, P.W.2, Randhir Yadav, P.W.3, Dinesh Paswan, P.W.4, Ramkeshwar Mandal and P.W.5, Haribansh Yadav. P.W.1 namely Laxman Paswan alias Laxmi has stated in his evidence that the occurrence is of more than two years ago. He was going with Janardan Yadav to Pipra school after loading sand on the tractor. When the tractor stopped at Pipra School, Shailendra Yadav, Adhyanand Yadav and Birendra came. Pistol was there in the hands of Shailendra and Adhyanand and Birendra was carrying "Lathi". Shailendra Yadav put the pistol on Janardan Yadav. Adhyanand assaulted Janardan with slaps. Adhyanand and Sahilendra asked to unload the tractor and they said that they would take it their door. This witness has stated that when he was unloading the tractor, Janardan fled away. Prem, Nirmal and Narayan Sah also came there and called Shailendra. Shailendra again asked to unload the tractor immediately. He also threatened to kill. This witness has further stated that Shailendra took them forcibly on the tractor to his door. P.W.2 Randhir Yadav has also stated in his evidence that the occurrence is of two and half years ago of 4.30 P.M. He was at the door of Yoganand Yadav. Prem was driving the tractor on which Shailendra Yadav, Bivendra Yadav, Adhyanand Yadav, Nirmal Yadav, Narayan Sah were there. Tractor stooped at the door of Shailendra Yadav. Thereafter, they took the tractor to the northern side. P.W.3 Dinesh Yadav has stated in his evidence in this respect that the occurrence is of 2-2½ years ago of 3 P.M. He was going to Mohania from his village. When he reached near the field of Pipra School, Shailendra Yadav, Nirmal

Yadav, Adhyanand Yadav, Virendra Yadav, Premlal Sah, Narayan Sah were going on tractor towards East. Premlal was driving the tractor. Laxman Paswan was also on the tractor. Tractor was of Janardan Yadav. He had seen the tractor from the distance of 4-5 hands. Therefore, from the perusal of the testimonies of P.W.2, Randhir Yadav and P.W.3, Dinesh Paswan it is clear that they had seen the accused persons taking away the tractor of the informant. P.W.4, Ramkeshwar Mandal has also stated that Laxman had disclosed him that Shailendra Yadav and his associates snatched the tractor. P.W.5, Haribansh Yadav has stated in his evidence that the occurrence is of the year 1999 of 2.30 P.M. At that time he was near the school. Tractor of Janardan Yadav with sand of Contractor Dayanand Yadav reached the school. Prem Kumar Sah, Shailendra Prasad Yadav, Birendra Yadav, Narayan Sah reached near the vehicle and asked Janardan to unload the sand from the vehicle immediately. Janardan unloaded the sand immediately out of fear. Thereafter Prem Kumar Sah and others who were four in number took the vehicle to the door of Shailendra and did not return to Janardan. All the aforesaid witnesses i.e. the informant, P.W.9, P.W.1, P.W.2, P.W.3, P.W.4 and P.W.5 have been cross-examined at length by the defence but in my considered opinion, defence has failed out any dent in their creditability so far as the charges under sections 323 and 384 of the Indian Penal Code is concerned. From the analysis of the testimonies of the informant Janardan Prasad Yadav (P.W.9), Laxman Paswan @ Laxmi (P.W.1), Randhir Yadav (P.W.2), Dinesh Yadav (P.W.3), Ramkeshwar Mehta (P.W.4) and Haribansh Thakur (P.W.5), it is clear and is proved beyond all reasonable doubts that on 22/03/1999 when the informant was getting the sand unloaded

from his tractor and trailor, all the three accused persons namely (1) Shailendra Yadav (2) Birendra Yadav and (3) Adhyanand Yadav came there armed with pistol, "lathi" and "Danda". They assaulted the informant and snatched and also took away the tractor of the informant by putting the informant in fear of death.

In view of the discussions made hereinabove, I find and held that the prosecution has successfully proved the charges against all the three accused persons under sections 323 and 384 of the Indian Penal Code beyond all reasonable doubts and all the three accused persons namely (1) Shailendra Yadav, (2) Birendra Yadav and (3) Adhyanand Yadav are guilty of the charges under sections 323 and 384 of the Indian Penal Code."

10. Being aggrieved by the Judgment of conviction and order of sentence, the petitioners preferred an appeal in the court of Sessions Judge, Purnea, vide Cr. Appeal No. 142 of 2014. The Appellate Court re-appreciated the entire evidences adduced on behalf of the prosecution and concurred with the findings of the trial Magistrate. Accordingly, the appeal was dismissed.

11. Being aggrieved by the Judgment of the appellate court, the instant revision application has been filed before this Court.

12. Learned counsel for the petitioners has submitted that since there was no demand of money, the ingredients of the offence punishable under Section 384 of the Indian Penal Code are



not attracted. He has further contended that the accused persons are closely related to the informant of the case and, hence, the allegation that they demanded any extortion money from the informant is highly unbelievable. Advancing his argument, he has contended that in any view of the matter the punishment awarded by the trial court is disproportionate to the offences alleged and since the petitioners have already remained in custody for about six months, this revision application may be allowed at least on the point of sentence.

13. Despite repeated calls, none has appeared on behalf of the State.

14. I have heard learned counsel for the petitioners and perused the record. So far as the judgments passed by the courts below are concerned, I find that the evidences brought on record have correctly been appreciated. The contention of the learned counsel for the petitioners that since there was no demand of *rangdari*, the ingredient of the offence under Section 384 of the Indian Penal Code are not attracted, is misconceived.

15. It would be evident from the evidence brought on record that the informant was deprived of his tractor and trailer by the accused persons on the point of pistol. Such an action would certainly attract the ingredients of the offence punishable under Section 384 of the Indian Penal Code. I also find that the reasonings

assigned by the trial Magistrate and approved and concurred by the appellate court are well founded. There is neither any illegality nor any perversity in the impugned judgments.

16. So far as the question of sentence is concerned, the maximum sentence awarded to the petitioners by the courts below is two years under Section 384 of the Indian Penal Code and the sentences awarded for the other offences have been ordered to run concurrently. Section 384 of the Indian Penal Code prescribes punishment which may extend to three years or with fine or with both.

17. It would be evident from the impugned judgment of the learned Magistrate that the petitioner Nos. 1, 2 and 3 were aged about 52, 47 and 62 years respectively on the date of judgment. It would also be evident from the record that there was an ongoing dispute between the parties and the parties are related to each other. The petitioners have got no criminal antecedent and they have been made accused in criminal case for the first time.

18. Taking into consideration the aforesaid aspects as also the fact that the occurrence took place about 17 years ago, the sentence awarded against the petitioners by the trial court for the offence punishable under Section 384 of the Indian Penal Code is reduced to one year from two years.

19. With the aforesaid modification in the sentence
awarded by the trial court, the revision application stands dismissed.

(Ashwani Kumar Singh, J)

S.Ali/-

AFR/NAFR	NAFR
CAV DATE	N/A.
Uploading Date	30.10.2016
Transmission Date	30.10.2016