

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.87 of 2015

Arising Out of PS.Case No. -498 Year- 1991 Thana -BARH District- PATNA

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1. Durga Paswan Son of Mahgu Paswan
 2. Mahesh Paswan Son of Durga Paswan
 3. Jugeshwar Paswan Son of Hari Paswan @ Hira Paswan
 4. Prahlad Paswan Son of Durga Paswan
 5. Kedar Paswan Son of Pragash Paswan
 6. Shatrughan Paswan Son of Hari Paswan @ Hira Paswan
 7. Sikandar @ Shiv Shankar Paswan Son of Hari Paswan @ Hira Paswan
 8. Mallu @ Ram Nandan Paswan Son of late Jangli Paswan
 9. Sadan Paswan Son of Dwarika Paswan
 10. Madan Paswan Son of Dwarika Paswan All residents of Village - Shekhopur, P.S. Barh, District - Patna.

.... Appellant/s

Versus

1. The State of Bihar.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Jagdish Prasad, Advocate

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

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

ORAL JUDGMENT

Date: 08-12-2017

Appellants, Durga Paswan, Mahesh Paswan, Jugeshwar Paswan, Prahlad Paswan, Kedar Paswan, Shatrughan Paswan, Sikandar @ Shiv Shankar Paswan, Mallu, @ Ram Nandan Paswan, Sadan Paswan, Madan Paswan have been found guilty for an offence punishable under Sections 147, 148, 323/149 IPC but during course of inflicting sentence, no order has been passed relating to Section 147 IPC. However, each one has been directed to undergo SI for 1 year under Section 148 of the IPC, SI for 1 year under Sections 323/149 IPC vide judgment of conviction and sentence dated 22.12.2014 passed by Additional Sessions Judge-2nd, Barh, Patna in connection with Sessions Trial No. 968/1994.



2. Sushil Paswan (PW 2) gave his Fard-e-beyan on 29.12.91 at about 5.15 PM while he was admitted at Barh Hospital disclosing therein that on the same day at about 4.00 PM, Panchayati was going on at the door of Dwarka Prasad on account of dispute over flow of sewage in between Devi Paswan (his fateher) and Durga Paswan wherein, both the parties indulged in hot discussions whereupon, Durga Paswan provoked, consequent thereupon, Mahesh Paswan, Jugeshwar Paswan, Prahlad Paswan, Kedar Paswan, Shatrughan Paswan, Sikandar @ Shiv Shankar Paswan, Mallu, @ Ram Nandan Paswan, Sadan Paswan, Madan Paswan armed with lathi, country made pistol, brick particles began to assault. He was assaulted by Mahesh, Shatrughan with lathi causing injury over his forehead (left side), right hand while Prahlad shot at his father Deo Paswan causing injury over his head. Then thereafter, all the accused persons assaulted them with Lathi and brick particles. Arjun, Jaggu and others had seen the occurrence on whose intervention they were saved from further assault. It has also been narrated that Mallu was also one of the assailant.

3. On the basis of aforesaid Fard-e-beyan, Barh PS Case No. 498/1991 was registered whereupon investigation commenced and concluded by way of submission of charge-sheet which happens to be the basis of instant trial which concluded in a manner as indicated above, subject matter of instant appeal.

4. The defence case as is evident from the mode of cross-



examination as well as statement recorded under Section 313 of the CrPC is that of complete denial of the occurrence as well as of false implication on account of dispute relating to flow of sewage.

5. During course of submission it has been submitted at the end of appellants that the appellants have faced rigour of trial since 1991. Some of the appellants remained in custody at an initial stage. In spite of having finding recorded by the learned lower court identifying the appellants guilty for an offence punishable under Sections 147, 148, 323/149 IPC, no separate sentence has been prescribed for an offence punishable under Section 147 of the IPC, though for an offence under Section 148, 323/149 IPC sentenced one year respectively with a further direction to run the sentences concurrently should not have been in the back ground of the fact that the versions of the prosecution has not at all found substantiated in a manner as projected coupled with the fact that neither the I.O. has been examined nor Dwarika Prasad where the alleged occurrence took place. Furthermore it has also been submitted that conviction could not have been recorded against the same accused under Section 147 IPC as well as under Section 148 IPC simultaneously but, instead of raising his plea on the merit of the case, considering the ordeal which appellants faced since 1991 the learned counsel submits that he would like to draw the attention that in the facts and circumstances of the case, it is a fit case whereunder application of Probation of Offenders Act will be more appropriated than to inflict substantial sentence.



6. Learned APP controverted the submissions and submitted that each and every offender should be punished according to finding recorded by the court that means to say inconsonance with the nature of offence otherwise, there would be chaos in the society. Offence is committed not only against an individual rather it is being committed against the society. Offenders happen to be devils who break the norms of the society attracting their prosecution as well as punishment in appropriate manner.

7. Be that as it may, it is not the intention of the legislator to have a pound of flesh against the flesh. Some of the offences being perceived as hazardous to the society or to the country, deprive the convict to avail privilege of Probation of Offenders Act, however, its conviction has been allowed relating to other kinds of offences whereunder this cast fits in. Apart from the same, the appellants had faced the ordeal of trial of years together without any fault at their end and further, the manner of occurrence did justify their prayer.

8. However, in order to properly appreciate the facts of the case, it is to be looked into wherefrom, it is evident that though parties were on strained relationship but that was not to that extent rather it was in the spur of the moment when, they indulged in hot discussions during course of Panchayati which was convened only for passage of sewage. That being so, neither it could be hazardous to the society nor the nature of the offence suggest that in case such privilege is allowed, it would be detrimental to the society.



9. From the judgment impugned, it is evident that although, the learned lower court had convicted the appellants for an offence punishable under Sections 147, 148, 323/149 IPC but, nothing has been disclosed/discussed by the learned lower court relating to Section 147 IPC while inflicting sentence, on the other hand, imposed relating to Section 148 as well as 323/149 of the IPC.

10. In ordinary course of nature, the matter would have been viewed differently but, considering the pendency of this case since 1991 and further as the court is of the opinion that the appellants be allowed to avail privilege of Section 4 of the Probation of Offenders Act, on account thereof, the aforesaid illegality is being ignored.

11. That being so, maintaining the conviction recorded by the learned lower court, the sentences so inflicted by the learned lower court are, hereby, rescinded and in lieu thereof, the appellants are directed to be released in terms of Section 4 of the Probation of Offenders Act, by way of executing bond of Rs. 2000/- with one surety effective for six months within 15 days, failing which the substantial sentence recorded by the learned lower court will substituted the same. In terms thereof, the instant appeal is disposed of.

(Aditya Kumar Trivedi, J)

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