

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Revision No.618 of 2014

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

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1. Manorma Devi, wife of Darogi Sao
2. Usha Devi, wife of Uday Kumar
3. Uday Kumar @ Uday Prakash, son of Darogi Sao
4. Prabhat Kumar, son of Darogi Sao
5. Durgi @ Darogi Sao, son of late Maho Saw
All resident of village- Lakhisarai, Mohalla- Dalpatti, P.S.-
Lakhisarai, District- Lakhisarai

.... Petitioners

Versus

1. The State of Bihar Respondent/s

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Appearance :

For the Petitioners : Mr. Ramakant Sharma, Sr. Adv.
Mr. Rajesh Kumar, Adv.
For the State : Mr. Surendra Kumar, APP
For the Informant : Mr. P. Pr. Nr. Sahi, Adv.

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

JUDGMENT AND ORDER

ORAL

Date: 29-06-2017

Heard learned Senior Counsel for the petitioner,
learned Counsel representing the informant and learned
Additional Public Prosecutor appearing on behalf of the State
of Bihar.

2. The petitioners are aggrieved by judgment
and order, dated 19.06.2014, passed by learned Ad hoc
Additional Sessions Judge V, Lakhisarai, in Criminal Appeal No.
128 of 2010, whereby while affirming the judgment of their
conviction of the offence punishable under Section 427, 149
and 147 of the Indian Penal Code, has acquitted them of the



charge under Section 379 read with Section 149 of the Indian Penal Code. After having affirmed the findings of conviction regarded by the learned Trial Court of the offence punishable under Sections 427, 149 and 147 of the Indian Penal Code, the learned Appellate Court has modified the sentence imposed by the learned Trial Court and, accordingly, the petitioner nos. 1 and 5 have been sentenced to undergo simple imprisonment for a period of six months and petitioner nos. 2 to 4 for a period of one year.

3. All these petitioners thus stand convicted of the offence punishable under Section 427, 149 and 147 of the Indian Penal Code and sentenced to imprisonment for a term of six months and one year, as indicated above.

4. The offences of which the petitioners have been convicted are punishable for a maximum term of two years.

5. The case of the prosecution, as unfurled in the First Information Report by the informant, Anil Kumar, is that on 20.04.2007, when his mother was alone in the house, all the appellants along with 15-20 labourers forcibly entered into his house by breaking boundary wall and took away golden ornaments, computer, colour television and other articles and they also damaged some household articles, such as, bed, telephone, cot, table, table watch etc.

6. Mr. Ramakant Sharma, learned Senior



Counsel, appearing on behalf of the petitioners, has submitted that it is evident from the evidence on record that there was no eye-witness to the alleged occurrence and in the absence of any eye-witness, the petitioners ought not to have been held guilty of the offences by the learned Trial Court and the learned Appellate Court, as the charge cannot be said to have been proved beyond all reasonable doubts. Further, he has drawn my attention to Section 3 of the Probation of Offenders Act, 1958, and has submitted that the learned Trial Court and the Appellate Court ought to have considered the said provision for releasing the petitioners after due admonition, taking into account the entire facts and circumstances. He has submitted that since the offences of which the petitioners have been convicted came within the purview of Section 3 of the Probation of Offenders Act, 1958, the Courts below were obliged to invoke the same.

7. He has next submitted that the petitioners have remained in custody for a period of 41 days after having been convicted and have also faced the ordeal of criminal processes for a period of more than a decade and, therefore, a lenient view may be taken in the matter of imposition of sentence. He has placed reliance on a Supreme Court's decision, in the case of **Mohinder Pal Jolly v. State of Punjab (AIR 1979 SC 577)**. He has referred to paragraph 14 of the said decision to bolster his contention.



8. Learned Counsel appearing on behalf of the informant, on the other hand, has submitted that the scope of this Court in revisional jurisdiction under Section 397 of the Code of Criminal Procedure, 1973, dealing with the concurrent findings of facts recorded by the Courts below, is limited. According to him, the interference would be warranted in such circumstance only if (i) the findings recorded by the Courts below are perverse, (ii) there is jurisdictional error, and (iii) if there is gross error of law having the effect of miscarriage of justice. He has placed reliance on a Supreme Court's decision, in the case of **State of Rajasthan v. Fatehkaran Mehdu**, reported in **AIR 2017 SC (Criminal) 393**.

9. There cannot be two views that in revisional jurisdiction, concurrent findings of facts recorded by the Courts below can be interfered with only when such findings are perverse. This has been the consistent view of the Supreme Court and this Court also.

10. On perusal of the materials on record, I am of the view that findings recorded by the Courts below cannot be said to be perverse since the findings cannot be said to be contrary to the evidence or absolutely without evidence. However, I find substance in the submission made on behalf of the petitioners that the learned Trial Court while considering the question of sentence was obliged to consider Section 3 of the Probation of Offenders Act, 1958, since the provisions of



the Indian Penal Code which were found to have been proved at the trial are squarely covered by the said Section 3 of the Probation of Offenders Act, 1958. Further, the petitioners have remained in custody for some period, which fact is not being disputed.

11. In the facts and circumstances of the case and the nature of dispute between the parties, leading to registration of the criminal case, in my view, interest of justice will be subserved if the sentence awarded by the Courts below is modified and altered to the period of custody which the petitioners have already undergone. I do accordingly. The terms of sentence of imprisonment imposed on the petitioners by the impugned judgment and order are hereby modified to the period of custody already undergone by the petitioners in connection with G.R. No. 499 of 2007 (Trial No. 583 of 2009), arising out of Lakhisarai Police Station Case No. 175 of 2007.

12. This application is according disposed of.

(Chakradhari Sharan Singh, J.)

Prabhakar Anand/-

AFR/NAFR	NAFR
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