

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Revision No.763 of 2016

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1. Krishna Sao, Son of Late Banshi Sao.

2. Prem Kandu, Son of Basant Prasad.

3. Ramashankar Raut, Son of Ram Lali Raut.

All resident of Mohalla-Underkila, Tweekari, P.S.-Tekari, District-Gaya.

.... Petitioner/s

Versus

1. The State of Bihar.

2. Domni Devi, Wife of Bhuneshwar Mistri No. 2, resident of Mohalla-Underkila, Tweekari, P.S.-Tekari, District-Gaya

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Gautam Kr. Kejriwal, Adv.

Mr. Atal Bihari Pandey, Adv.

Mr. Mohit Asaiwal, Adv.

Ms. Aishwariya Riti, Adv.

For the State : Mr. Braj Kishore Prasad, APP

For the O.P. No. 2 : Mrs. Nevedita Nirvikar, Adv.

Mr. Subodh Kr. Barnwal, Adv.

Ms. Surya Nilamkari, Adv.

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT & ORDER

Date: 02-03-2017

The petitioners stood convicted of the offence punishable under Sections 323 and 452 of the Indian Penal



Code (*hereinafter referred to as the "IPC"*) and sentenced to undergo imprisonment for one year and two years respectively for the said offences, with the sentences to run concurrently, by judgment and order, dated 29.07.1995, passed by learned Judicial Magistrate, Ist Class, Gaya, in T.R. No. 133 of 1995, arising out of G.R. No. 543 of 1988 (Tekari P.S. Case No. 30 of 1988).

2. The appellate Court of learned 6th Additional Sessions Judge, Gaya, by his judgment and order, dated 02.04.2016, passed in Cr. Appeal No. 03/16/55/95, has affirmed the trial Court's judgment of conviction and order of sentence. In that background, the petitioners have filed the present criminal revision application under Section 397 read with Section 401 of the Code of Criminal Procedure, 1973 (*hereinafter referred to as the "Cr.P.C."*), aggrieved by the said judgments and orders.

3. I have heard learned counsel for the petitioners, learned Additional Public Prosecutor for the State and learned counsel appearing on behalf of the opposite party No. 2.

4. It would be apt to note in brief the case of the prosecution first, in order to appreciate the rival contentions made on behalf of the parties. Some persons are said to have installed an idol near the house of the informant



(opposite party No. 2). Some local miscreants used to take snaps of ladies while they would offer worship to the said idol. This was objected to by the daughter of the informant, whereafter, the accused persons, namely, Ram Lali Raut, Ramashankar Raut (petitioner No. 3), Prem Kandhu (petitioner No. 2), Banshi Sao and Krishana Sao (petitioner No. 1), entered inside the house of the informant, assaulted her and her daughters with slaps. Petitioner No. 3 is said to have assaulted them with *lathi*, causing fracture of elbow of the left hand of the informant, whereafter, she had fallen unconscious. On the basis of written report of the informant to this effect, Tekari P.S. Case No. 30 of 1988 came to be registered on 17.02.1988, alleging commission of offence punishable under Sections 147, 323 and 448 of the IPC. The police, after completion of investigation, submitted charge-sheet for the offence punishable under Sections 452, 323 and 324/34 of the IPC. After taking of cognizance and framing of charge, the petitioners were put on trial.

5. Upon adduction of evidence at the trial, learned trial Court held the petitioners and two other persons, namely, Ram Lali and Bansi Sahu, guilty of the offence punishable under Sections 323 and 452 of the IPC and sentenced them to undergo imprisonment as has been indicated at the very outset. Petitioner No. 1, Krishna Sao,



and petitioner No. 3, Ramashankar Raut, are sons of accused late Banshi Sao and Ram Lali Raut. Banshi Sao and Ram Lali Raut appear to have died and, therefore, there is no application on their behalf.

6. Assailing the impugned order, learned counsel, appearing on behalf of the petitioners, has submitted that at the trial neither the investigating officer nor the doctor was examined. According to him, the very First Information Report could not be proved at the trial in the absence of evidence of the investigating officer and injury could not be proved in the absence of evidence of the doctor.

7. Learned counsel, appearing on behalf of the informant-opposite party No. 2, on the other hand, relying on the provision under Section 145 of the Evidence Act, has submitted that non-examination of the investigating officer cannot be said to be fatal, in the facts and circumstances of the case, since the crucial witnesses were consistent in their evidence to establish that the petitioners had made preparation for causing hurt to the informant and her family members and they voluntarily caused hurt to them after committing criminal trespass by entering into the dwelling house of the informant. According to her, no injury report was required to be proved, to prove beyond all reasonable doubt, an offence under Section 323 of the IPC, which can



be done by even causing bodily pain. She has also contended that the prosecution at the trial established the charge of commission of offence punishable under Section 452 of the IPC, inasmuch as it has been established, beyond all reasonable doubt, that the petitioners had entered into dwelling house of the informant and assaulted her and her family members, after having made preparation for the said purpose.

8. I do not find much force in the submission made on behalf of the petitioners that non-examination of the investigating officer or the doctor, in order to establish an offence under Section 323 of the IPC, can be treated to be fatal for the case of the prosecution. The contradictions, which have been pointed out by the learned counsel for the petitioners, in the evidence of the witnesses with reference to their statements before the police under Section 161 of the Cr.P.C., is of no consequence inasmuch as there is nothing to show that attention of the witnesses were drawn at the trial.

9. Concurrent findings of fact recorded by the court below, based on evidence adduced at the trial, to me do not appear to be perverse. The findings, so recorded, cannot be said to be contrary to evidence adduced or without any evidence. It is well accepted principle that the



High Court exercising revisional jurisdiction, under Section 397 read with Section 401 of the Cr.P.C., should ordinarily not re-appreciate the whole evidence, particularly when there are concurrent findings recorded by two Courts.

10. Learned counsel for the petitioners has submitted that the courts below ought to have given the petitioners benefit of Sections 3 and 4 of the Probation of Offenders Act, 1958, considering the nature of accusation and the fact that the petitioners had no criminal history at all. He has submitted that the occurrence, if any, appears to have taken place in a fit of rage over small dispute with religious sentiments, attached to it, and, therefore, a lenient view ought to have been taken.

11. I find some substance in the submission so advanced on behalf of the petitioners that it is desirable to take a lenient view in the matter of imposition of punishment. Considering attenuating and mitigating circumstances, particularly in the background of the genesis of the occurrence, in my view, the term of sentence of imprisonment needs to be reduced to the period which the petitioners have already undergone in custody in connection with said T.R. No 133 of 1995, arising out of Tekari P.S. Case No. 30 of 1988, which is ordered accordingly. The term of sentence is, hereby, reduced to the period of



custody undergone by the petitioners.

12. I do not find any cogent reason to interfere with the findings of conviction.

13. This application stands disposed of.

(Chakradhari Sharan Singh, J.)

Praveen-II/-

AFR/NAFR	NAFR
CAV DATE	N/A.
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