

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.2432 of 2017

Arising Out of PS.Case No. -54 Year- 2015 Thana -SIMULTALA District- JAMUI

- =====
1. Bimlesh Kumar @ Bimal Kumar, Son of Surendar Singh, R/o Village- Bhagya Nagar.
 2. Ravi Singh @ Ravia, Son of Pratap Singh Chouhan, R/o Village- Pubiya,
 3. Sarvesh Kumar Son of Ganga Ram Sharma, All R/o Village- Kishuni, P.S.- Kishuni, District- Manipuri (U.P.).

.... Appellant/s

Versus

1. The State of Bihar

.... Respondent/s

with

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Criminal Appeal (SJ) No. 2514 of 2017

Arising Out of PS.Case No. -54 Year- 2015 Thana -SIMULTALA District- JAMUI

- =====
1. SHAMBHU BURNWAL @ SHAMBHU SINDURIA @ SHAMBHU DAS Son of Huro Modi, Resident of Village- Bichkorwa, Police Station- Chakai, District- Jamui.

.... Appellant/s

Versus

1. The State of Bihar

.... Respondent/s

with

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Criminal Appeal (SJ) No. 2470 of 2017

Arising Out of PS.Case No. -54 Year- 2015 Thana -SIMULTALA District- JAMUI

- =====
1. Arjun Singh Yadav, Son of Bhajan Lal, R/o Village- Khajiriya,
 2. Umed Singh Son of Panchilal Yadav, R/o Village- Harichandarpur, Both are P.S.- Alao, District- Manipuri (U.P.),

.... Appellant/s

Versus

1. The State of Bihar

.... Respondent/s

with

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Criminal Appeal (SJ) No. 2483 of 2017

Arising Out of PS.Case No. -54 Year- 2015 Thana -SIMULTALA District- JAMUI

- =====
1. Karu Miyan @ Mustafa Miyan, Son of Md. Sultan, Resident of Village- Dhodhari, Police Station- Simuttalla, District- Jamui.

.... Appellant/s

Versus

1. The State of Bihar.



.... Respondent/s

with

Criminal Appeal (SJ) No. 2834 of 2017

Arising Out of PS.Case No. -54 Year- 2015 Thana -SIMULTALA District- JAMUI

1. PARAMVEER YADAV @ PARVEER YADAV Son of Late Rash Bihari Yada v
Resident of Village - Punsia, P.S. Rajoun, District - Banka.

.... Appellant/s

Versus

1. The State of Bihar.

.... Respondent/s

with

Criminal Appeal (SJ) No. 3141 of 2017

Arising Out of PS.Case No. -54 Year- 2015 Thana -SIMULTALA District- JAMUI

Chandra Kishor Das

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

Appearance :

(In CR. APP (SJ) No.2432 of 2017)

For the Appellant/s : Mr. Yogesh Chandra Verma, Advocate
Mr. Pankaj Kumar Jha, Advocate

For the Respondent/s : Mr. D.K. Sinha, APP

For the IOC : Mr. Ajay Kumar Thakur, Adv.

(In CR. APP (SJ) No.2514 of 2017)

For the Appellant/s : Mr. Mr. Yogesh Chandra Verma, Advocate
Mr. Pankaj Kumar Jha, Advocate

For the Respondent/s : Mr. Sujit Kumar Singh, APP

For the IOC : Mr. Ajay Kumar Thakur, Adv.

(In CR. APP (SJ) No.2470 of 2017)

For the Appellant/s : Mr. Yogesh Chandra Verma, Advocate
Mr. Pankaj Kumar Jha, Advocate

For the Respondent/s : Mr. D.K. Sinha, APP

For the IOC : Mr. Ajay Kumar Thakur, Adv.

(In CR. APP (SJ) No.2483 of 2017)

For the Appellant/s : Mr. Mr. Yogesh Chandra Verma, Advocate
Mr. Pankaj Kumar Jha, Advocate

For the Respondent/s : Mr. D.K. Sinha, APP

For the IOC : Mr. Ajay Kumar Thakur, Adv.

(In CR. APP (SJ) No.2834 of 2017)

For the Appellant/s : Mr. Mr. Sanjay Kumar Jha, Advocate
Mr. Satyaveer

For the Respondent/s : Mr. Binod Bihari Singh, APP

For the IOC : Mr. Ajay Kumar Thakur, Adv.

(In CR. APP (SJ) No.3141 of 2017)

For the Appellant/s : Mr. Pankaj Kumar Sinha, Advocate

For the Respondent/s : Mr. Mayanand Jha, APP



For the IOC : Mr. Ajay Kumar Thakur, Adv.
Mr. Krishna Chandra, Adv.

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA
C.A.V. JUDGMENT
Date: 20-12-2017

These appeals have been preferred by the appellants against the common judgment dated 24.07.2017 and order of sentence dated 24.07.2017 passed by Sri Rajesh Kumar, Additional Sessions Judge, - I, Jamui in Sessions Trial No. 250 of 2016, whereby the appellants were convicted for the offences punishable under Sections 379/511 of the Indian Penal Code and were sentenced to undergo R.I. for two years, under Section 401 of the Indian Penal Code and sentenced to undergo R.I. for three years, under Section 3 of the Prevention of Damage to Public Property Act, and were sentenced to undergo R.I. for three years, and further convicted the appellants under Section 15(2) of Petroleum and Minerals Pipeline Act, 1962 and were sentenced to undergo R.I. for five years, with a fine of Rs. 5,000/- and on default of payment of fine, further S.I. of three months. All the above sentences were directed to run concurrently.

2. Facts indispensable for adjudication of present appeals are that Officer In-charge, (P.W. 1) Simultalla police Station, recorded his self statement stating there in that on 23.12.2015 at 12.30 A.M., he received a secret information that at Simultalla Chandramnadih Road near Bijonabad, a car is parked and some persons were standing there and on that information, he along with his police force proceeded towards the said place and surrounded that place and found some



persons were digging the field. On seeing the police party, some persons tried to flee away but seven persons including appellants, namely, Bimlesh Kumar @ Bimal Kumar, Karu Miyan @ Mustaffa, Ravi Singh @ Raviya, Sarvesh Kumar, Arjun Singh Yadav, Umed Singh and Chandra kishor Das and the persons, who were apprehended on the spot disclosed the name of persons, who had succeeded in fleeing away as Shambu Burnwal @ Shambu Sindurai (appellant) and Pramvir Yadav (appellant). It has also been alleged that police found two ditch near the pipe line in the field of one Monka Yadav measuring 2' length 3' width and 2 ½". Further on search police recovered one Mahindra Maxico, one Hero Honda generator, digging and welding machine, *Kudal*, *Gaita*, Rod and other articles. Seizure list was prepared and the same was handed over to all the accused persons.

3. On the basis of above, Simultalla P.S. Case No. 54 of 2015, under Section 379/511 and 401 of the Indian Penal Code, Section 15(2) and 14(4) of the Petroleum and Mineral Pipeline Act, Section 3/4 of the Explosive Substance Act and Section 3/4 of the Prevention of Damage to Public Property Act, was registered against the appellants and others and after investigation, charge-sheet was submitted on 19.02.2016 vide charge sheet no. 06 of 2016 against the seven above named accused persons except the appellant Paramveer Yadav and Shambu Burnwal @ Shambhu Sinduria.

4. Cognizance of the offence was taken and, thereafter, the case



was committed to the court of sessions, which ultimately traveled to the file of Sri Rajesh Kumar, learned Additional Sessions Judge, -I, Jamui, for trial and disposal.

5. Charges were framed under Sections 379, 511 and 401 of the Indian Penal Code, Section 3 /4 of Prevention of Damage to Public Property Act, Section 3/4 of the Explosive Substance Act and Section 15(2) and 15(4) of the Petroleum and Mineral Pipeline Act.

6. In this case altogether five witnesses have been examined from the side of the prosecution, who happens to be police personnel and they are: P.W. 1- Navnish Kumar (informant), P.W. 2- Sachidanand Dubey, P.W. 3-Narendra Singh, P.W. 4- Sheo Kumar Mandal, P.W. 5 – Ashwani Kumar (Investigating Officer).

7. Apart from above, following documentary evidences have been admitted into evidence and marked as ; Ext. 1. writing and signature of informant on written petition, Ext. 2. Signature of Narendra Singh on seizure list and Ext. 3 Formal F.I.R. Further articles seized were produced in the Court and they were marked as:-

Ext. I – Honda Generator EU65, 5.5 KVA

Ext. II – Welding machine

Ext. III - Valve of 50 MM

Ext. IV - Iron rod with 8” drill beat annexed.

Ext. IV/A – Two threaded iron rod of 38” long

Ext. V – Welding Electrode Rod 38” long 67 pieces and 14” long 92 pieces

Ext. VI – Iron disk of four holes.

Ext. VII – Iron disk of four holes

Ext. VIII – G.I. Pipe having one disk on top

Ext. IX – G.I. Pipe having a plate 5”x7” in one side and a iron disk on



other side.

Ext. X – Drill

Ext. XI – Pipe wrench of 50 MM

Ext. XII - Electrode holder

Ext. XIII – 10” long wire

Ext. XIV – Iron clamp 8.5” long

Ext. XV – 2 ½” round clamp

Ext. XVI – Two wrench 24/26

Ext. XVI/A – One wrench 24/27

Ext. XVI/B - One wrench 30/32

Ext. XVI/C – One wrench 14/15

Ext. XVI/D – One wrench 16/17.

Ext. XVII – One steel pipe

Ext. XVIII – 12 pieces nut and bolt

Ext. XIX – One nut bolt of 4.6”

Ext. XIX/A – One nut bolt of four bashers

Ext. XIX/B – One nut bolt of 3”

Ext. XIX/C – Six pieces barring basher

Ext. XX – Six pieces M-seal

Ext. XXI – One iron plate

Ext. XXII – Carbide wrapped in polythene

Ext. XXIII – One nut bolt length 8”

Ext. XXIV – Two plastic ropes of 20” each

Ext. XXV – One black spectacle.

Ext. XXVI – One spade.

Ext. XXVII- One *Gainta*

Ext. XXVIII - Black and white colour mobile.

Ext. XXVIII/A- Black colour mobile of Spice company

Ext. XXVIII/B – One mobile of green colour

Ext. XXVIII/C – One white mobile.

8. It appears from perusal of the records that neither any oral nor any documentary evidence has been adduced on behalf of the defence and from the statement of the appellant recorded under Section 313 Cr.P.C, the defence of the appellants appear to be of innocence and



false implication.

9. Learned Trial Court after conclusion of trial convicted the appellants under Sections 379/511 of Indian Penal Code, Section 401 of the Indian Penal Code, Section 3 of the Prevention of Damage to Public Property Act and Section 15(2) of Petroleum and Minerals Pipeline Act, and sentenced him as stated above.

10. Aggrieved by the said judgment, appellants preferred the present appeal.

11. P.W. 1, is the informant of this case and he has stated in his evidence that he was posted as SHO of the Simultallah police station and on 21.12.2015, he received information at about 12 'O' clock in the night that a vehicle is being parked near the petroleum pipeline, situated near the Bijonabad Kothi, and some persons are standing there and on that information, he formed a team of police officials and proceeded and surrounded the place and found that some persons were digging the field and, thereafter, apprehended Karu Mian, five other accused persons and one driver, they disclosed the name of two other persons, namely, Shambu Burnwal @ Shambhu Sinduria and Paramveer Yadav @ Parveer Yadav, who succeeded in fleeing away, taking advantage of the night. His evidence also discloses that several articles including Mahindra Maxico, one Hero Honda generator, digging, dragging and welding machine, *Kudal*, *Gaita*, Rod etc., were seized and as there was no independent person available to become the witness of seizure list in the night, accordingly, seizure list was



prepared and two police personnel present there became the seizure list witness. His evidence also disclosed that earlier also a case was lodged for committing theft of petroleum products from same place. His evidence further disclosed that the field, which was alleged to have been dug by the appellants, was a fertile land. He has also stated in his evidence that at the time of raid, no hole was found in the pipeline and there was no oil coming out from the said pipeline. His evidence further shows that he had not recorded the statement of any of the accused persons. He has also admitted in his evidence that names of Shambhu Burnwal @ Shambhu Sinduria and Paramveer Yadav @ Parveer Yadav have been disclosed by the accused persons, arrested on the spot and both these appellants have no criminal antecedents.

12. P.W. 5 is the Investigating Officer in this case and his evidence also shows that he has produced the seized articles in the court, which has been marked as material exhibits I to XXVIII/C. This witness has admitted that there is no seal nor any signature of police official over the seized articles. His evidence in para -2 also shows that at the place of occurrence besides the pipeline, a ditch was being dug and he has also given the boundary of the same. He further stated that accused persons were trying to extract the oil by making hole in the pipeline.

13. P.W. 2, 3 and 4 are also police personnel and as per their evidence, they were present at the place of occurrence at the time of arrest of the accused persons and seizure of articles. Evidence of



P.W. 2 in para -1 also shows that a ditch was being dug near the parked vehicle on which, generator was loaded and other articles were also there. He also stated about arrest of the seven accused persons. This witness has also admitted in para -8 of his evidence that he had not seen any hole in the pipeline nor the oil was coming out from the pipeline. This witness has further stated in his evidence in chief about digging of a ditch and arrest of seven accused persons. Evidence of P.W. 3 also shows that ditch was being dug near the place of occurrence. P.W. 4 has stated that the pipeline was crossing through the Bijonabad Kothi and he along with others reached there and arrested the accused persons and seized the articles. This witness has also stated about digging of a ditch near the pipeline.

14. On perusal of the above prosecution evidence, it appears that there are consistent prosecution evidence about the arrest of the appellants other than appellants in Criminal Appeal (SJ) No. 2514 of 2017 and Criminal Appeal (SJ) No. 2834 of 2017 and they have also consistently stated about the seizure of material exhibits from there and their evidence further shows that a ditch was being dug near the pipeline.

15. Submission of learned counsel for the appellants in all the appeals is that they have falsely been implicated in this case and there is nothing available on record to show that they were making any attempt to commit theft of petroleum products from the pipeline. There is also nothing on record to show that appellants were trying to



penetrate the pipeline or were inserting any device to extract petroleum products from the said pipeline rather the evidence on record shows that no theft of petroleum product was made and though it is alleged that some of the accused persons were digging ditch and some were standing, however, it has not been proved that those ditches were new ones or old, whereas, the evidence disclosed that earlier a theft of petroleum product was committed at that place. Further submission is that neither any independent witness of the locality nor the chowkidar of that area nor the owner of the field, where ditches were found, has been examined. Further no official of Indian Oil Corporation of that area has been examined in support of the prosecution case of digging ditches near the pipeline.

16. Further contention of learned counsel for the appellants is that even if the entire evidence is believed to be true, at best it can be a case of preparation, which will not come under the definition of attempt to commit theft and preparation and attempt to commit theft are two different things, which has been considered in catena of decisions of Hon'ble Apex Court. In support of his contention, learned counsel for the appellants has relied upon the Judgment of Hon'ble Supreme Court in the case of **Malkiat Singh and Another v. State of Punjab**, reported in **AIR 1970 Supreme Court 713**, in the case of **Chaturi Yadav and others vs. State of Bihar** reported in **AIR 1979 Supreme Court 1412** and further on the decision of this Court in the case of **Manoj Kumar @ Manoj Kumar Gupta vs.**



State of Bihar reported in **PLJR 2007(1) 320**. It has also been contended that only circumstance that has come against the appellants except appellants in Criminal Appeal (SJ) No. 2514 of 2017 and Criminal Appeal (SJ) No. 2834 of 2017, is that they were arrested on the spot and one ditch was found dug near the pipeline and seizure of material exhibits from the place of occurrence, on which also, no signature of any police official or witness are mentioned to show that the same has been recovered from the place of occurrence in connection with present case. The above circumstance is not in itself sufficient to convict the appellants in this case.

17. Further contention of learned counsel for the appellants is that so far appellants, namely Shambhu Burnwal @ Shambhu Sinduria and Paramveer Yadav @ Parveer Yadav are concerned, even according to prosecution case, they were not arrested on spot nor any incriminating material has been recovered from them and their names have been disclosed by the other appellants before the police, which is not admissible in law. Further submission is that against appellant Chandra kishor Das, evidence has come about his presence, but the prosecution evidence itself shows that he was driver of the vehicle.

18. On the basis of above submission, learned counsel for the appellants urged that conviction and sentence of appellants under Sections 379/511 of the Indian Penal Code, Section 401 of the Indian Penal Code, Section 3 of the Prevention of Damage to Public Property Act and Section 15(2) of Petroleum and Minerals Pipelines Act, 1962,



is not sustainable in the eye of law and fit to be set aside.

19. On the other hand, learned counsel for the State as well as learned counsel for Indian Oil Corporation has submitted that the appellants were caught on the spot in the dead night near the place of occurrence and some of them were found digging the ditch near the pipeline as well as the fact that material exhibits have been recovered from the place of occurrence and all these facts goes to show that they were making attempt to commit theft of the oil from the pipeline and were also causing mischief to damage the pipeline, which is a public property and were making or caused to make unauthorized connection to extract petroleum product from said pipeline. The conduct of the appellants is also relevant under Section 8 of the Indian Evidence Act, which goes against them. Further, there is no explanation by the appellants for their presence at the place of occurrence and recovery of material exhibits from the place of occurrence. On the basis of the above, it has been contended that conviction of appellants under Sections 379/511 of the Indian Penal Code, Section 401 of the Indian Penal Code, Section 3 of the Prevention of Damage to Public Property Act and Section 15(2) of Petroleum and Minerals Pipeline Act, 1962, is just and proper and does not require any interference.

20. It appears that main thrust of the argument of learned counsel for the appellants is that no case is made out either under any section of Indian Penal Code or under Prevention of Damage to Public Property Act as well as Petroleum and Minerals Pipeline Act, against



the appellants as the evidence only shows about their presence at the place and some devices were seized and except that there is nothing against the appellants and at best it will come under purview of preparation. This court is well aware that preparation and attempt are two different thing and attempt is something more than preparation. On going through the para -4 of the judgment as relied upon by learned counsel for the appellants in the case of **Malkiat Singh and Another v. State of Punjab** (supra), it appears that the Hon'ble Apex Court has observed as under:-

“The preparation consists in devising or arranging the means or measures necessary for the commission of the offence. On the other hand, an attempt to commit the offence is a direct movement towards the commission after preparations are made. In order that a person may be convicted of an attempt to commit 'a crime, he must be shown first to have had an intention to commit the offence, and secondly to have done an act which constitutes the actus reus of a criminal attempt. The sufficiency of the actus reus is a question of law which had led to difficulty because of the necessity of distinguishing between acts which are merely preparatory to the commission of a crime, and those which are sufficiently proximate to it to amount to an attempt to commit it. If a man buys a box of matches, he cannot be convicted of attempted arson, however clearly it may be proved that he intended to set fire to a haystack at the time of the purchase. Nor can he be convicted of this offence if he approaches the stack with the matches in his pocket, but, if he bends down near the stack and lights a match which he extinguishes on perceiving that he is being watched, he may be guilty of an attempt to burn it. Sir James Stephen, in his Digest of Criminal Law, [art. 50](#), defines an attempt as follows:

“an act done with intent to commit that crime, and forming part of a series of acts which would constitute its actual commission if it were not interrupted. The point at which such a series of acts begins cannot be defined, but depends upon the circumstances of each particular case.”

The test for determining whether the act of the appellants constituted an attempt or preparation is whether the overt acts already done are such that if the offender changes his mind and does not proceed further in its progress, the acts already done would be completely harmless. In the present case it is quite



possible that the appellants may have been warned that they had no licence to carry the paddy and they may have changed their mind at any place between Samalkha Barrier and the Delhi-Punjab boundary and not have proceeded further in their journey. [Section 8](#) of the Essential Commodities Act states that "any person who attempts to contravene, or abets a contravention of, any order made under [section 3](#) shall be deemed to have contravened that order". But there is no provision in the Act which makes a preparation to commit an offence punishable. It follows therefore that the appellants should not have been convicted under [s. 7](#) of the Essential Commodities Act."

21. Similarly, in **Chaturi Yadav and others vs. State of Bihar**, Hon'ble Apex Court while considering a case under Section 399/402 of Indian Penal Code has held that *"The evidence led by the prosecution merely shows that eight persons were found in the school premises. Some of them were armed with guns, some had cartridges and others ran away. The mere fact that these persons were found at 1 A.M. does not, by itself, prove the appellants had assembled for the purpose of committing dacoity or for making preparations to accomplish that object.* While dealing with a similar issue, a single Bench of this Court in the case of **Manoj Kumar @ Manoj Kumar Gupta vs. State of Bihar** (supra) has also relied upon the above judgment in **Malkiat Singh and Another v. State of Punjab** (supra). While dealing with a case under Section 376/511 Indian Penal Code, the difference between preparation and attempt has also been considered by Hon'ble Apex Court in the case of **Aman Kumar and Another v. State of Haryana** reported in **AIR 2004 Supreme Court 1497** and it has been observed by Hon'ble Apex Court in para 9, 10 and 11 that:-



“9 A culprit first intends to commit the offence, then makes preparation for committing it and thereafter attempts to commit the offence. If the attempt succeeds, he has committed the offence; if it fails due to reasons beyond his control, he is said to have attempted to commit the offence. Attempt to commit an offence can be said to begin when the preparations are complete and the culprit commences to do something with the intention of committing the offence and which is a step towards the commission of the offence. The moment he commences to do an act with the necessary intention, he commences his attempt to commit the offence. The word 'attempt' is not itself defined, and must, therefore, be taken in its ordinary meaning. This is exactly what the provisions of [Section 511](#) require. An attempt to commit a crime is to be distinguished from an intention to commit it; and from preparation made for its commission. Mere intention to commit an offence, not followed by any act, cannot constitute an offence. The will is not to be taken for the deed unless there be some external act which shows that progress has been made in the direction of it, or towards maturing and effecting it. Intention is the direction of conduct towards the object chosen upon considering the motives which suggest the choice. Preparation consists in devising or arranging the means or measures necessary for the commission of the offence. It differs widely from attempt which is the direct movement towards the commission after preparations are made. Preparation to commit an offence is punishable only when the preparation is to commit offences under [Section 122](#) (waging war against the Government of India) and [Section 399](#) (preparation to commit dacoity). The dividing line between a mere preparation and an attempt is sometimes thin and has to be decided on the facts of each case. There is a greater degree of determination in attempt as compared with preparation.

10. An attempt to commit an offence is an act, or a series of acts, which leads inevitably to the commission of the offence, unless something, which the doer of the act neither foresaw nor intended, happens to prevent this. An attempt may be described to be an act done in part execution of a criminal design, amounting to more than mere preparation, but falling short of actual consummation, and, possessing, except for failure to consummate, all the elements of the substantive crime. In other words, an attempt consists in it the intent to commit a crime, falling short of, its actual commission. It may consequently be defined as that which if not prevented would have resulted in the full consummation of the act attempted. The illustrations given in [Section 511](#) clearly show the legislative intention to make a difference between the cases of a mere preparation and an attempt.

11. In order to find an accused guilty of an attempt with intent to commit a rape, Court has to be satisfied that the accused, when he laid hold of the prosecutrix, not only desired to gratify his passions upon her person, but that he intended to do so at all events, and notwithstanding any resistance on her part. Indecent assaults are often magnified into attempts at rape. In order to come to a conclusion that the conduct of the accused was



indicative of a determination to gratify his passion at all events, and in spite of all resistance, materials must exist. Surrounding circumstances many times throw beacon light on that aspect.”

22. In the background of the above judgment, it is now settled that there is clear demarcation between preparation and attempt. In the present case, on perusal of the evidence as discussed above, there is consistent evidence that the seven appellants except appellants, namely, Shambhu Burnwal @ Shambhu Sinduria and Paramveer Yadav @ Parvir Yadav, were arrested on the spot in the dead night and ditch was being dug near the pipeline and several devices like generator, welding machine, drilling machine etc., were found at the place of occurrence. The aforesaid evidence of their presence in dead of night near pipeline along with devices like generator welding machine, *Kudal* and several other devices certainly goes against them and they have to explain as to why they were present in that dead night with such devices and as to why the ditch was being dug near pipeline. Defence of some of appellants is that they have falsely been implicated in this case as they were going to *Deoghar* but as their vehicle broke down near the place of occurrence, they were standing there. Further defence of appellant Karu Mian in Criminal Appeal (SJ) No. 2483 of 2017 is that he had a chicken shop and as he was not obliging the police, he has falsely been made accused in this case. Similar is the defence of appellant Chandra kishor Das as his vehicle was demanded by the police and when he refused, he has been



made accused in this case. From evidence it also appears that appellant Chandra kishor Das was driver of the vehicle, which was in the name of his father, however no paper was produced in support of this contention. From perusal of the evidence, it also appears that so far appellant Sarvesh Kumar and Umed Singh are concerned, they belong to Mainpuri, U.P., However, nothing has been brought on record on behalf of defence in support of their explanation rather there is consistent prosecution evidence that they were arrested near the pipeline and a ditch was also being dug and they were carrying various devices along with themselves including generators, welding machine etc., which are not essential articles to be carried to Deoghar. Though appellants have tried to create doubt on the genuineness of material exhibits as there was no seal on the material exhibits produced before the Court nor there is any signature over the seized articles, which are easily available in the market. No doubt, they may be easily available but their presence in the dead night near the pipeline and arrest of appellants near the place of occurrence is certainly an incriminating circumstance against them and the witnesses had seen them digging the ditch, which is another circumstance against the appellants and certainly goes against them. Evidence is consistent about arrest of appellants except appellants, namely, Shambu Burnwal @ Shambu Sinduria and Paramveer Yadav @ Parveer Yadav. Evidence is also consistent about recovery of seized articles which has been produced in the court, which cannot be



brushed aside on the ground of some technicalities not being followed.

23. Submission of learned counsel for the appellants that neither any independent witness nor the official of Indian Oil Corporation have been examined, it is well settled that evidence of police witnesses cannot be thrown out only because they are police witnesses rather the prosecution has to show that those police witnesses were prejudiced against the appellants and also supports their false implication rather the evidence of prosecution witnesses is considered, which appears to be consistent. In such circumstances, to my opinion in the above facts and circumstances of the case, non examination of Investigating Officer shall not make those evidence and incriminating circumstances redundant.

24. As discussed above, there is difference between preparation and attempt but in the present case, there is consistent evidence that some of the appellants were digging a ditch and some were found standing near the pipeline. As such the aforesaid act of appellants is something more than the preparation as they were not only present along with certain devices but also were seen digging ditches i.e. an *actus reas*, which will come under the definition of attempt and the aforesaid act will also show that action of appellants of digging near a pipeline armed with devices will also come under the mischief in order of damage to public property, which is punishable under Section 3 of Prevention of Damage to Public Property Act and further their act also



comes within the purview of Section 15(2) of Petroleum and Mineral Pipelines Act, as they were causing to make an unauthorized connection by willfully inserting a device to extract the petroleum product.

25. However, so far appellants, namely, Shambhu Burnwal @ Shambhu Sinduria and Paramveer Yadav @ Parveer Yadav in Criminal Appeal (SJ) No. 2514 of 2017 and Criminal Appeal (SJ) No. 2834 of 2017, respectively, are concerned, they were neither arrested from the spot nor there is any recovery from their possession and they have been made accused only on the basis of confession of other appellants before the police and except that there is nothing against these two appellants.

26. Considering the entire discussions made above, so far the appeals with regard to appellants, namely, Shambhu Burnwal @ Shambhu Sinduria and Paramveer Yadav @ Parveer Yadav in Criminal Appeal (SJ) No. 2514 of 2017 and Criminal Appeal (SJ) 2834 of 2017, respectively is concerned, the same is allowed and their conviction and sentence under Sections 379/511 of the Indian Penal Code, Section 401 of the Indian Penal Code, Section 3 of the Prevention of Damage to Public Property Act and Section 15(2) of Petroleum and Minerals Pipelines Act, 1962, passed by Sri Rajesh Kumar, Additional Sessions Judge, -I, Jamui in Sessions Trial No. 250 of 2016, is not sustainable in the eye of law.

27. So far appellants, in Criminal Appeal (SJ) Nos. 2432 of 2017,



2470 of 2017, 2483 of 2017 and 3141 of 2017, are concerned, considering the facts and circumstances, I find sufficient and consistent evidence available against them about their presence at the place of occurrence and also about recovery of certain devices like generator, welding machine, drilling machine etc., and no satisfactory explanation as been given about their presence and though appellant Karu Mian has come with a case that he used to run a chicken shop and as he did not oblige the police, he has falsely been implicated in this case and appellant Chandra kishor Das has come with a case that he is only a driver of the vehicle, which is in the name of his father, however, nothing has been produced by them to substantiate their contentions. Hence I find no infirmity in the impugned judgment convicting the appellants under Sections 379/511 of the Indian Penal Code, Section 401 of the Indian Penal Code, Section 3 of the Prevention of Damage to Public Property Act and Section 15(2) of Petroleum and Minerals Pipelines Act, 1962, appears to be just and proper.

28. So far question of sentence is concerned, it appears that all the appellants have remained in custody for about two years except appellant, Chandra kishor Das, who also appears to be in custody for about eight months and all the appellants are young and they also have to look after their families, as such their sentences are reduced to the sentence already undergone by them in custody. However, the sentence of fine shall remain intact.



29. With the above modification in sentence, Criminal Appeal (SJ) Nos. 2432 of 2017, 2470 of 2017, 2483 of 2017 and 3141 are dismissed.

30. So far Criminal Appeal (SJ) Nos. 2514 of 2017 and 2834 of 2017 are allowed and conviction and sentence against appellants Shambhu Burnwal @ Shambhu Sinduria and Paramveer Yadav @ Parveer Yadav are set aside.

31. As the appellants, namely, Shambhu Burnwal @ Shambhu Sinduria and Paramveer Yadav @ Parveer Yadav are in judicial custody, they are directed to be released forthwith, if not required in connection with any other case.

(Vinod Kumar Sinha, J)

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