

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.599 of 2002
(Against the judgment of conviction and order of sentence dated
23.09.2017 passed by Shri Anant Prasad Srivastava, Presiding Officer,
1st Additional Fast Track Court, Siwan, in Sessions Trial No.
289/83/194/2001, arising out of Mairwa P.S. Case No. 48/82)

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1. Raj Mohammad
2. Moharram Ansari, both sons of late Akbar Ali Mian, resident of village-Domdih,
P.S.-Mairwa, District-Siwan.
3. Hafiz Mian, son of Jumman Mian, resident of village-Parasiya(Bujrug), P.S.-
Mairwa, District-Siwan.

.... Appellant/s

Versus

State of Bihar

.... Respondent/s

With

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Criminal Appeal (SJ) No. 606 of 2002

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1. Dwarika Chaudhary, son of Sakhi Choudhary, resident of village-Domdih, P.S.-
Mairwa, District-Siwan.
2. Lal Mohammad, son of Bhola Mian, resident of village-Ahirauli, P.S.-Bankata,
District-Deoria.

.... Appellant/s

Versus

State of Bihar

.... Respondent/s

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Appearance :

(In CR. APP (SJ) No.599 of 2002)

For the Appellant/s : Mrs. Madhuri Lata, Advocate
Mr. Randhir Kumar, Advocate

For the Respondent/s : Mr. Abhay Kumar, APP

(In CR. APP (SJ) No.606 of 2002)

For the Appellant/s : Mrs. Madhuri Lata, Advocate
Mr. Randhir Kumar, Advocate

For the Respondent/s : Mr. Abhay Kumar, APP

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

Date: 25-11-2017

Both these appeals arises out of a common judgment dated



23.09.2002 passed by the Presiding Officer, 1st Additional Fast Track Court, Siwan, in Sessions Trial No. 289/83/194 of 2001, arising out of Mairwa P.S. Case No. 48 of 1982.

1. The prosecution case as appearing from the Fard-beyan of the informant is as follows:-

On the statement of the informant Ali Raza Ansari, an FIR of Mairwa P.S. Case No 48 of 1982 was registered on 25.8.82. According to the informant, when the said informant was sleeping on his Bathan of his house in the night intervening between 24.3.82 and 25.3.82, all of sudden, at about 3.00 A.M. on the sound of the explosion of bomb and on the cries of the female members of the house, the informant woke up and proceeded towards his house and he noticed that about 10 to 12 persons armed with lathis, Bhalas, Pistols and bombs started assaulting the female members of the house of the informant and were asking from them as to where Ali Raza Ansari (informant) was. The informant could understand that miscreants had come to his house for killing him. The miscreants were flashing torch light. The informant identified from amongst the miscreants accused (1) Raj Mohammad, (2) Sardar Mian, (3) Motil Lal Bhagat, (4) Lal Mohammad, (5) Moharram Mian, (6) Hafiz Mian and (7) Dwarka Choudhary. The informant ran towards the village side and raised alarm and the villagers arrived at and having seen the



villagers, the miscreants fled towards west and north. The informant and the villagers came inside the house and they saw that Sardar Mian was lying in injured condition in the courtyard. He was not speaking. The informant also noticed that miscreants had taken away articles from his house. He also found that ladies of his family had sustained injuries at the hands of the miscreants. It is also alleged that miscreants had taken away the documents of the land and there is land dispute between the informant and the miscreants.

2. The police after investigation, submitted charge-sheet against seven accused persons including the accused Sardar Mian and Motilal Bhagat. The accused Sardar Mian and Motilal Bhagat died after submission of the charge-sheet and as such cognizance was taken against the five accused persons and after cognizance the case was committed to the court of sessions. The trial court framed charge under sections 148, 307/149 and 380 of the Indian Penal Code. The accused persons pleaded not guilty and as such they were tried by the 1st Fast Track Court, Siwan.

3. On behalf of the prosecution, 12 witnesses were examined. The informant died during the trial. The I.O. of the case was not examined. However, on affidavit, a typed copy of the case diary and a copy of injury report were filed by the prosecution which was marked as exhibits 1 and 2. On behalf of the defence, a



compromise petition was brought on record signed on behalf of the accused persons and the brother of the informant. A petition was also filed seeking permission to compound the case by brother of the informant.

4. The trial court on the basis of materials available on record, rejected the petition for compounding the offence. The court held out that the brother of the informant after death of the informant has no authority to enter into a compromise. The trial court proceeded in the instant case that accused persons have ransacked the house and assaulted the female inmates, although the Doctor who examined the injured was not examined. In the present case In-charge Medical Officer Mairwa dispensary was examined as P.W.11 and the trial court relied upon his statement that the injury report was sent by the Medical Officer to the court. The court on the basis of case diary accepted that injuries were sustained by the inmates and other family members of the informant and relying upon the depositions of the P.Ws. 1, 2 4, 7, 8 and 9 held out that the witnesses have identified the miscreants and on that basis, the 1st Fast Track Court, Siwan convicted the appellants (in Cr. Appeal No. 599 of 2002) and two appellants (in Cr. Appeal No. 606 of 2002) for an offence under sections 148, 324/149 of the Indian Penal Code. However, they were acquitted for the charge under sections 380, 307/149 of the Indian



Penal Code.

5. Learned counsel appearing on behalf of the appellants submits that the incident is dated 25.3.82 and the trial court consumed 20 years in concluding the trial and the appeal remained pending for 15 years. In the meanwhile, 35 long years has elapsed. He has drawn attention of the court to the judgment of the trial court to indicate that on the date of judgment dated 23.9.2002, Raj Mohammad was aged about 48 years, Moharram Mian was aged about 65 years, Dwarika Choudhary was aged about 70 years, Lal Mohammad was aged about 58 years and as such the appellants have now reached advanced age. The appellant Raj Mohammad has now completed 63 years, Moharram Mian has completed 80 years whereas Lal Mohammad has completed 73 years. He submits that trial court has acquitted them for the offence under sections 307/149 and 380 of the Indian Penal Code. He submits that after death of the informant, the brother of the informant has entered into a compromise and also filed a petition for compounding the offence and in view of the fact that the appellants have been convicted under sections 148, 324/149 and they have been sentenced to undergo imprisonment for a period of one year and as such he submits that at this stage the court should consider the desirability of acquitting the appellants in terms of compromise petition jointly filed by the brother of the informant after death of the



informant and the accused persons.

6. In the alternative, he submits that when the parties have entered into a compromise and filed a petition for compounding the offence and the trial court without considering the case ultimately convicted the appellants under sections 149, 324/149 of the Indian Penal Code, this court should consider acquitting the appellants in terms of compromise petition jointly filed by the brother of the informant and the accused persons after death of the informant.

7. Mr. Abhay Kumar, appearing on behalf of the State submitted that the appellants do not deserve to be acquitted in the instant case in view of the fact that witnesses have identified them in commission of the offence of assault. However, he conceded on the point that the appellants have now reached advanced age and as such the punishment may be reduced as period undergone.

8. Considering the aforesaid facts and circumstances, the court is of the view that now after 35 years of the occurrence, the appellants have faced trial for 20 years and the appeal remained pending for 15 years and they have remained in jail for nearly one and half month, thus, no useful purpose would be served by sending them jail to serve the sentence. Thus, the court is of the view that though the conviction is not required to be interfered with however, sentence deserved to be modified to the extent of period already undergone.



Accordingly, the appeal is disposed of affirming the judgment of conviction. However, in the peculiar facts and circumstances of the case, the sentence is reduced to the period already undergone.

9. Since the appellants are on bail, they are discharged from the liabilities of bail bonds.

(Anil Kumar Upadhyay, J)

Ravi/-

AFR/NAFR	NAFR
CAV DATE	N/A
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