

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Revision No.144 of 2016

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

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1. Kashi Kant Jha
2. Ramanand Jha
3. Ramesh Jha
All Sons of late Surya Narayan Jha
4. Sanjay Kumar Jha son of Kashi Kant Jha, resident of Village -
Raghopur, Police Station Mabnigachi, district Darbhanga.

.... Petitioners

Versus

1. The State of Bihar.
2. Jamun Jha, son of Navin Jha, all resident of Village- Raghopur,
Police Station Manigachhi, District Darbhanga.

.... Respondents

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Appearance :
For the Petitioner : Mr. Baidyanath Thakur
Mr. Shankar Kumar Thakur
Mr. Pravakar Thakur
Mr. Binod Kumar
For the State : Mr. Manoj Kumar

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

JUDGMENT AND ORDER
ORAL

Date: 02-05-2017

Heard learned Counsel for the petitioners and
learned Additional Public Prosecutor representing the State.

2. The petitioners are aggrieved by judgment and
order, dated 12.11.2014, passed by learned Additional
Sessions Judge III, Darbhanga, in Criminal Appeal No. 80 of
1999, whereby he has dismissed an appeal preferred by these



petitioners and affirmed the judgment of conviction and order of sentence, dated 03.08.1999, passed in C. R. No, 623 of 1994.Trial No. 165 of 1999.

3. The Trial Court has convicted the petitioners on the charge of commission of offence punishable under Sections 323, 427, 380, 448, 341 and 504 of the Indian Penal Code and sentenced them to undergo rigorous imprisonment for a period of one year each for the offences punishable under Sections 380 and 427 of the Indian Penal Code. For the offence punishable under Section 323 of the Indian Penal Code, they have been sentenced to undergo imprisonment for a period of six months and for the offence punishable under Section 448 of the Indian Penal Code, they have been sentenced to undergo simple imprisonment for a period of four months; whereas, for the offences punishable under Sections 341 and 504 of the Indian Penal Code, the sentence is of one month each.

4. Despite service of notice upon the son of the complainant-Opposite Party No. 2, there is no representation on behalf of the complainant.

5. The case of the petitioner, in brief, as narrated in the complaint petition, is that these petitioners had constructed a ditch by the side of the northern boundary of the complainant for the purpose of causing damage to the



complainant's wall. When the complainant objected to it, the petitioners are said to have abused him and on further protest, they surrounded him and assaulted him with slaps and fists etc. It has further been alleged that on cry having been raised, when the people came, they abused them also and assaulted them, too. They took away radio and a bag of the complainant and the petitioner no. 4 took away some utensils.

6. At the trial, altogether 5 (five) prosecution witnesses were examined. Upon consideration of materials on record, the Trial Court recorded conviction of these petitioners for commission of offences punishable under Sections 323, 427, 380, 504, 341 and 504 of the Indian Penal Code, and sentenced them to imprisonment, as has been noted above.

7. The Appellate Court has affirmed the finding of conviction and order of sentence, against which the present criminal revision application, under Section 397 read with Section 401 of the Code of Criminal Procedure, 1973, has been preferred.

8. Learned Counsel appearing on behalf of the petitioners, faced with a situation where the findings of the Courts below are concurrent, has taken a line of *least résistance* and has submitted that without interfering with the finding of conviction recorded by the Courts below, this Court



may consider modifying the sentence of imprisonment, in view of the attenuating circumstances and the fact that the petitioners have been facing criminal prosecution for more than two decades. He has submitted that the period of sentence, in the peculiar facts and circumstances of the case, be reduced to the period for which they have already remained in custody in connection with the criminal case in question. He has also submitted that it is evident from the evidence on record that there was some civil dispute between the complainant and these petitioners, who are next door neighbours, which finally resulted into registration of a criminal case. They are living peacefully as on the date and, therefore, it may be harsh for the petitioners to be sent back again to jail to serve the sentence, after so many years.

9. Considering the submissions advanced on behalf of the petitioners, in the facts and circumstances of the case, considering the genesis of occurrence and other mitigating circumstances, I am of the view that ends of justice will be subserved if the order of sentence of imprisonment is modified to the period of custody, which the petitioners have already undergone in connection with the concerned criminal case, with a direction to duly compensate the complainant-Opposite Party No. 2.

10. Accordingly, the impugned orders are



modified. The sentence of imprisonment is reduced to the period of custody, which the petitioners have already undergone. Further, the petitioner will be required to compensate. Each of them will be required to deposit in the Court Treasury of the Court below a sum of Rs. 12,000/- by way of compensation within a period of two months from today, and the Court below, thereafter, shall release the said amount in favour of the complainant-Opposite Party No. 2.

11. This application stands disposed of accordingly.

(Chakradhari Sharan Singh, J.)

Prabhakar Anand/-

AFR/NAFR	NAFR
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