

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Revision No.611 of 2017

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

- =====
1. Sheo Nath Thakur, Son of Late Kishori Thakur.
 2. Ashok Thakur, Son of Sheo Nath Thakur.
 3. Rajesh Thakur, Son of Late Kishori Thakur.
 4. Mantoo Thakur, Son of Sheo Nath Thakur.
 5. Kameshwar Thakur, son of Sheo Nath Thakur.

All are resident of Village- Tarwamagar Pal, P.S.- Dariyapur, District- Saran at Chapra.

.... Petitioners

Versus

The State of Bihar

.... Respondent

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Appearance :

For the Petitioners	:	Mr. Uday Shankar Singh, Advocate
For the State	:	Mr. Manoj Kumar, APP
For the Informant	:	V.R.P. Singh, Advocate
		Mr. G.C. Roy, Advocate

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR

ORAL JUDGMENT

Date: 12-09-2017

Heard learned counsel for the petitioner, learning APP appearing on behalf of the State as well as learned counsel for the informant.

2. The petitioners have been convicted by judgment and order dated 20.02.2016, passed by learned 2nd Assistant Sessions Judge, Saran at Chapra in Sessions Trial No.211 of 2004, arising out of Dariyapur P.S. Case No.2 of 2003 (G.R. No.34 of 2003) under Sections 323, 149, 147 and 148 of the Indian Penal Code and sentenced to undergo SI for one year for the offence under Sections 323 and 149 of the Indian Penal Code and also convicted for one year of SI for committing other two offences under Sections 147 and 148



of the Indian Penal Code however, directed to run the sentences concurrently. The petitioners preferred appeal before the court of Sessions Judge, Chapra vide Cr. Appeal No.8 of 2016 and the learned 1st Additional Sessions Judge, Saran at Chapra upholding the judgment passed by the trial court dismissed the appeal. Being aggrieved with the concurrent finding of both courts, this revision application has been preferred.

3. Learned counsel for the petitioners submits that PW1 and PW2 both are interested witnesses as they are inimical to the accused persons, so their evidence cannot be relied upon. Secondly, that PW1 and PW2 are not eye witnesses as P.W.6 has stated in his deposition that they reached at the place of occurrence along with him, and PW6 himself admits that he reached at the place of occurrence after the assault. In alternative argument, learned counsel for the petitioners submits that the petitioners should have been given benefit of the Probation of Offenders Act as it was their first conviction.

4. Learned counsel appearing on behalf of the informant submits that there is no illegality or error in the concurrent finding of the courts.

5. Considering the rival submissions of both sides and on perusal of the records as well as after going through the evidence, this



Court finds that Pashupati Thakur (PW1) and Saroj Kumar (PW2) were present nearby the place of occurrence and reached immediately at the place of occurrence and witnessed it. The Court finds no major contradiction in their deposition touching root of the matter so their evidence cannot be disbelieved only on the ground that PW6, son of the informant (PW5) has stated that Saroj Kumar (PW2) reached there along with him though in para-6 of his deposition he stated that Saroj Kumar was already present at the place of occurrence before he reached there. Besides others, the informant (PW5), injured of the case has also supported his case and there is no infirmity in his evidence and the injury found on his person is proved by PW11, the doctor. Three injuries are found on the person of the informant, which are lacerated cut injury 2" x 1" x ½" on right leg and ½" x 1" x ½" over left forearm above wrist joint and sharp cut injury over left parietal region of scalp 2.5" x ¼" x ¼". The evidence of the witnesses cannot be disbelieved merely on the ground that they are inimical to the accused. The law is well settled in this regard that appreciation of witnesses inimical to the accused requires a closure scrutiny, so with regard to the conviction under Sections 323 and 149 of the Indian Penal Code as well as under Sections 147 and 148 of the Indian Penal Code, this Court does not find any error leading to miscarriage of justice, so the conviction is upheld. However, the sentence is reduced



to six months for each offences and all the sentences shall run concurrently setting off the period of imprisonment already undergone. Since the petitioner is on bail, he is directed to surrender and serve out the remaining period of sentence or the court to take all coercive steps to secure presence of the accused to undergo remaining part of sentence.

6. With modification in the sentence, this revision application is disposed of.

(Arun Kumar, J.)

S.Kumar/-

AFR/NAFR	NAFR
CAV DATE	NA
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