

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.620 of 2002

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1. Ramai Chaudhary, son of Megha Chaudhary
 2. Kanhai Chaudhary, son of Meghu Chaudhary
 3. Binda Bhar son of Srikishun Bhar
 4. Kishun Bhar son of Sheoratan Bhar, all are resident of village Harihas Police Station Hussainganj, District- Siwan.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Raghav Prasad, Advocate
For the State	:	Mr. Z. Hoda, APP

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL JUDGMENT

Date : 14-10-2017

Heard learned counsel for the appellants and counsel appearing on behalf of the State.

2. The four appellants have filed the instant appeal against the judgment and order of conviction and sentence dated 10.10.2002 passed by the 1st Additional Fast Track Court, Siwan in Trial No. 109 of 1988/ 191 of 2001 arising out of Husainganj P.S. Case No. 84 of 1986.

3. The appellant Ramai Chaudhary, Kanhai Chaudhary and Kishun Bhar have been convicted under Sections 147 and 323 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for six months and the appellant Binda Bhar has been convicted under Sections 147 and 324 of the Indian Penal



Code and sentenced to undergo rigorous imprisonment for one year.

3. From the judgment of the trial court it appears that other four accused persons have been granted the benefit under Section 360 Cr. P.C.

4. The instant case arises out of Husainganj P.S. Case No. 84 of 1986 registered on 29.5.1986 and we are in 2017 and during the intervening period 31 years have elapsed. The genesis of the crime is grazing of plant by the buffaloes of the informant side which led to altercation in which both sides have sustained injuries.

5. Mr. Raghav Prasad, learned counsel for the appellants submits that the trial court has committed error in ignoring the injuries sustained by the accused persons in the occurrence and non-explanation of the injury sustained by the accused side goes against the prosecution but the trial court has ignored this aspect. He submitted that in the instant case as per the prosecution story the main allegation was levelled against one Bachan Chaudhary and Lagan Choudhary who, in fact, died before the trial in the instant case. He submitted that in the totality of the fact situation there is absolutely no overt act alleged against these appellants and as such the conviction of the appellants by the trial court is unsustainable. He submitted that if the trial court has granted the



benefit of Section 360 Cr.P.C. to other four accused persons, it ought to have considered the case of these appellants leniently and considering their advance age they should also have been granted the same benefit instead of convicting and passing order of sentence.

6. On the date of judgment of the trial court on 10.10.2002 the appellant No. 1, Ramai Chaudhary was aged about 60 years, Appellant No. 2 Kanhai Chaudhary was aged about 55 years, Appellant No. 3 Bindu Bhar was aged about 50 years and appellant No. 4 Kishun Bhar was aged about 55 years and they have now become 75 years, 70 years, 65 years and 70 years old respectively.

7. Considering the fact that the incident is of 1986 and the trial court has consumed 16 years in conclusion of the trial and the present appeal remained pending for 15 years, the appellants have now become 65 to 75 years old and now they are at the evening of their lives. Whether any penological purpose would be served in sending them back to the prison is a question begging answer in this case?

8. Jurist have coined various justification and theories of punishment basically four theories of punishment as accepted by and large, namely, Deterrent, Retributive, Preventive and Reformatory theories. Retributive theory is condemned by the



civilized society as barbaric and is not accepted in most of the part of the globe. The basic concept of imprisonment is to promote deterrent effect as well as prevent commission of crime and also to provide reform in the wrong doers. Therefore, the object of imprisonment is to either ensure deterrent effect or to provide reform or ensure that the criminals do not commit crime but on appreciation of the case in hand, the Court find that none of the objective for imposing punishment is served by sending them in jail custody at the age of 65 and above in a case where the trial court has held out these appellants guilty of offence under Sections 147, 323 and 324 of the Indian Penal Code.

9. Considering the totality of the fact situation, the court is of the view that the appellants are not guilty for commission of any heinous crime where the appellants should be sent back to the jail to serve the remaining part of sentence.

10. In view of the reasons stated above, the Court deem it fit and proper that instead of directing the appellants to serve the remaining sentence, ends of justice would be served by reducing the sentence to the period already undergone. Accordingly, the appeal is partly allowed by upholding the conviction but reducing the sentence to the period already undergone by the appellants.



11. The appellants are discharged from the liability of their bail bonds.

(Anil Kumar Upadhyay, J)

spandey/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	17.10.2017
Transmission Date	17.10.2017

