

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.242 of 1994

=====

Ramchandra Yadav, son of Naresh Yadav, resident of Village- Purani
Dharamshala, Station Road Dumraon, P.O. Dumraon, P.S. Dumraon, District-
Buxar

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

=====

with
Criminal Appeal (DB) No. 266 of 1994

=====

Bhim Yadav, son of Ram Bhajan Yadav, resident of village Dumraon, Police
Station – Dumraon, District- Buxar

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

=====

Appearance :

For the Appellant/s : Mr. Buxi S.R.P.Sinha, Sr. Advocate
For the Respondent/s : Mr. A.P.P.

=====

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY)

Date : 18-01-2018

Both the appeals arise out of the judgment of conviction and
order of sentence 15.4.1994/18.4.1994 passed by Shri Bhagat
Singh, 2nd Additional Sessions Judge, Buxar in Sessions Trial No.
583 of 1989, whereby the appellants have been convicted under
Section 396 of the Indian Penal Code and sentenced to undergo
imprisonment for life.



2. The prosecution case in brief is that on 17.2.1992 at about 7.15 AM when the informant Kaushalya Devi, her daughter Maya Kumari and her husband was sitting in the room which was east side and door was closed and electric bulb was burnt, Bhim Yadav, Ramchandra Yadav of Mohalla Dumraon armed with gun entered into the house of the informant and Bhim Yadav fired which hit back side of her husband and when the informant reached there then Ramchandra Yadav fired which hit in the abdomen of the informant. It is further stated that Bhim Yadav took out a gun from Almirah and both accused persons were went away by saying that the work was over and thereafter two and three round of firing was made upon which family members of Parasnath reached there and Parasnath has received gun shot injury and Chura injury and these persons stated that Bhim Yadav and Ram Chandra while entered into the room they had opened fire upon these persons. The informants claimed to have identified the aforesaid persons and claimed to identify others later on. The police after receiving information about the occurrence by the informant reached the place of occurrence and they had took the injured to the hospital.

3. On the basis of the aforesaid fardbeyan of Kaushalya Devi, P.W. 9 Dumraon P.S. Case No. 3 of 1989 was registered



under Sections 302, 307, 380/34 of the Indian Penal Code and Section 27 of the Arms Act. After investigation the police submitted charge sheet under Section 396 of the Indian Penal Code. The case was committed to the court of sessions. The trial court framed the charges under Section 396 against two accused persons, appellants herein and on the accused persons pleaded not guilty and claimed that they have been falsely implicated in this case on account of previous enmity, they were put on trial.

4. The prosecution examined 12 witnesses in support of its case. In this case the doctor was not examined. The trial Court on scrutiny of the evidence convicted the appellants under Section 396 and sentenced the appellants to undergo rigorous imprisonment for life.

5. Mr. Buxi S.R.P.Sinha, learned senior counsel appearing on behalf of the appellants submitted that in the present case out of 12 witnesses, the informant and her daughter Maya Kumari are the eye witnesses. The other witnesses, namely, P.W. 7 is hearsay, P.Ws. 1 to 6 have not supported the prosecution case, P.W. 12 is the formal witness, P.W. 11 is the IO of the case, P.W. 10 has not supported the case and as such the entire prosecution case is based on deposition of P.Ws. 8 and 9.



6. Mr. Buxi S.R.P.Sinha, submitted that on the closure scrutiny of deposition of P.W. 8 informant and P.W. 9, it would be evident that these two witnesses in their cross-examination has admitted that due to dark and absence of any light and the fact that miscreants had used masks, they could not identify the real assailants.

7. Learned senior counsel for the appellants submitted that in the present case previous enmity is admitted and in the cross-examination it is admitted that the identification of the real assailants was not possible and in the absence of identification of the real assailants the informant due to previous enmity has named the accused persons appellants herein as assailants. Referring to the aforesaid circumstances, learned counsel submitted that in the case of previous enmity when there is no source of identification of the real assailants chance of false implication cannot be ruled out and submitted that in the present case false implication of the appellants is most probable. He referred to the further examination of the P.W. 9 and submitted that this witness in her further examination has admitted that she could not identify the real assailants and the informant has entered into compromise on her own sweet will. Learned counsel submits that although the case is not compoundable but on realizing the fact that the accused are



innocent, she entered into compromise and admitted the fact that there was no light to identify the real assailants and in view of the doubtful circumstance of identification of the accused when they were bearing masks, the conviction of the appellants is based only on suspicion.

8. Lastly learned counsel submitted that in the present case the doctor was not examined and in the absence of the examination of the doctor the conviction of the appellants is unsustainable. Mr. Sinha alternatively submitted that both the appellants on the date of judgment of the trial court were 35 and 45 years of age and as such they have become now 58 and 68 years of age. He submitted that in the totality of the fact situation, this court may consider the fact that appellants have remained in jail for more than 7 years and considering the advance age and the custody already undergone, the court may consider desirability of reducing the sentence.

9. Learned counsel appearing on behalf of the State submitted that the infirmity highlighted by the appellants does not render the judgment bad. In the totality of the fact situation the judgment of conviction of the trial court is appropriate. However, he admitted that of course during the intervening period the



appellants have become 58 and 68 years old and also admitted the fact that the parties have entered into compromise.

10. We have gone through the materials available on the record. On due scrutiny of the materials on record and discussions in the judgment of the trial court, we are of the view that the trial court has not committed any error in convicting the appellants. However, in view of the subsequent development of compromise and the fact that the appeals remained pending for nearly 24 years, we are of the view that under the provisions of Section 396 IPC, the court has the discretion to award alternative punishment including punishment upto 10 years and/or fine. In the totality of the fact situation of this case, we are of the view that appellants have served imprisonment for more than 7 years and they have now become of advance age during the pendency of the appeal and the appeals remained pending for 24 years, the sentence is reduced and modified as the period already undergone and payment of fine to the family of the informant.

11. Accordingly, while upholding the conviction under Section 396 IPC, we modify the sentence as period already undergone and fine of Rs. 15,000/- each payable to the family of the informant considering the advance age of the appellants within



a period of three months from the date of receipt/production of a copy of this judgment.

12. With the aforesaid modification, the appeals are partly allowed and disposed of in the manner indicated above. Since the appellants are required to pay a fine of Rs. 15,000/- each to the family of the informant within a period of three months, they shall be discharged from the liability of the bail bonds only on deposit of the fine of Rs. 15,000/- within the aforesaid period of three months.

(Rajendra Menon, CJ)

(Anil Kumar Upadhyay, J)

spandey/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	27.01.2017
Transmission Date	27.01.2017

