

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.559 of 2015

Arising Out of PS.Case No. -106 Year- 1997 Thana -Warsaliganj District- Nawada

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1. Md. Mustaque, son of Late Md. Maqbul
2. Md. Nasim, son of Late Naro Miyan
3. Md. Faisal @ Kaushal, son of Md. Mustaque
4. Md. Nisad, son of Md. Jamil

All Resident of village- Baghibardiha, P.S. Warisaliganj, in the district of Nawada.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

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Appearance:

For the Appellant/s : Mr. Deepak Kumar, Adv.

For the Respondent/s : Mr. S.A. Ahmad, APP

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

ORAL JUDGMENT

Date: 09-08-2018

Appellants, Md. Mustaque, Md. Nasim, Md. Faisal @ Kaushal, Md. Nisad have been found guilty for an offence punishable under Section 323/34 IPC and each one has been directed to undergo R.I. for one year, under Section 341/34 IPC and each one has been directed to undergo S.I. for one month with a further direction to run the sentences concurrently by the First Addl. Sessions Judge, Nawada vide judgment of conviction and order of sentence dated 13.08.2015 in connection with Sessions Trial No.163 of 1998 /47 of 2013.

2. Md. Allauddin (PW.5) gave his fardbeyan on 02.10.1997 while he was admitted at Sadar Hospital, Nawada divulging the fact that on 01.10.1997 at about 07:00 PM while he was returning after closing the shop and reached near the house of Md. Mustaque, Md. Kaushal, Md. Nisad, Md. Nasim Md. Mustaque



scolded, abused and on protest, Md. Mustaque gave *garasa* blow over his head while Md. Nisad and Md. Nasim hurled indiscriminate *lathi* blow. Md. Faisal @ Kaushal who was armed with Saif, gave blow over his head causing injury thereupon. Then thereafter, Md. Md. Mustaque snatched away his wrist watch as well as cash appertaining to Rs.5826/-. He, after sustaining injury, fell down. Md. Jamhiruddin, Md. Matin and others lifted him to hospital where he is being treated.

3. After registration of Warsaliganj P.S. Case No.106/1997 investigation commenced and concluded by way of submission of charge sheet which happens to be the basis for trial, meeting with the ultimate result, subject matter of instant appeal.

4. Defence case as is evident from mode of cross-examination, as well as statement recorded under Section 313 of the Cr.P.C. is that of complete denial. It has also been pleaded that the prosecution party attempted to out raise modesty of wife of brother of Md. Mustaque whereupon Warsaliganj P.S. Case No.73/1998 has been registered on the basis of Complaint Petition No. 789/1997 as well as on account of prevailing animosity with the witnesses more particularly against witness Md. Asgar Hussain who hatched a conspiracy whereunder, this case has purposely been filed. It has also been pleaded that witness PW.2 Md. Jamiruddin had enticed away one *Musharni* and for that, a panchayati was convened wherein they opposed illegal activity of aforesaid Md. Jamiruddin who also happens to be instrumental in getting this case filed. To substantiate the same, made FIR of Warsaliganj P.S. Case No.73/1998 as Ext.A.



5. In order to substantiate its case, prosecution had examined altogether five PWs who are PW.1-Md. Matin, PW.2-Md. Jamiruddin, PW.3-Md. Ahsan, PW.4-Md. Asgar and PW.5-Md. Allauddin as well as had exhibited signature of PW.5 over fardbeyan as Ext.1. Though, no oral evidence has been adduced at the end of the appellant but FIR of Warsaliganj P.S. Case No.73/1998 has been exhibited as Ext.A.

6. The learned counsel for the appellants confined his submission over sentence having inflicted by the learned lower court inconsonance with the offences whereunder appellants have been found guilty. In this regard, it has been submitted that occurrence is of the year 1997. Though, there happens to be some sort of freckle against appellant on account of their absence for which Md. Nasim remained under custody from 10.02.1998 to 20.02.1998, 30.11.2007 to 28.11.2008, Md. Nisad remained under custody from 17.10.1997 to 07.11.1997, 30.11.1997 to 28.11.2008, Md. Mustaque and Md. Faisal @ Kaushal remained under custody from 17.10.1997 to 22.01.1998 and so, the sentence imposed by the learned lower court is found saturated appropriately whereupon it be modified as undergone and to justify such plea, it has been submitted that learned lower court had appreciated the laches persisting in the prosecution case more particularly, on account of non-examination of the Investigating Officer, doctor as well as infirmities persisting in the evidence of prosecution witnesses. It has been submitted that so far conviction under Section 379 IPC is concerned that is not at all found duly substantiated from the evidence available on the record,



however, even if retained, the sentence prescribed therefor could be treated in same way.

7. The learned Additional Public Prosecutor fairly concedes that considering the nature of the guilt having recorded by the learned lower court, did justify the submission having made on behalf of learned counsel for the appellants.

8. Considering the nature of the finding recorded by the lower court it looks expedient in the interest of justice to acknowledge the submission of the learned counsel for the appellants coupled with the fact that appellants have faced rigor of trial since 1997. Accordingly, maintaining the conviction having recorded by the learned lower court, sentence is reduced to already undergone. In terms thereof, instant appeal is disposed of. Appellants are on bail, hence are discharged from its liability.

(Aditya Kumar Trivedi, J.)

Prakash Narayan

AFR/ N.A.P.R.	A.F.R.
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