

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.511 of 2003

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

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1. Kameshwar Yadav, Son of Sakal Deo Yadav
 2. Manoj Yadav, Son of Satto Yadav
 3. Jagarnath Yadav, Son of Sakal Deo Yadav
 4. Maheshwar Yadav, Son of Sakal Deo Yadav
 5. Arun Yadav, Son of Sakal Deo Yadav
 6. Pathak Yadav, Son of Sukhkdev Yadav.

All residents of Village – Novawakhar, P.s. – Kishanpur, District -Suapaul
.... Appellants

Versus

State of Bihar

.... Respondent/

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Appearance :

For the Appellant/s : Mr. Rajesh Kumar Sharma, Amicus Curiae.

For the Respondent/s : Mr. Bipin Kumar, APP

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA

ORAL JUDGMENT

Date: 31-08-2018

Nobody has appeared on behalf of the appellants in spite of repeated calls and the case is of the year 2003, I deem it appropriate to appoint Mr. Rajesh Kumar Sharma, learned Advocate, as *Amicus Curiae* to assist the Court.

2. Challenge in this appeal is of judgment of conviction dated 27.09.2003 and order of sentence dated 30.09.2003 passed by Shri Bipin Bihari Singh, Additional Sessions Judge, Saharsa in G.R. Case No. 1017/98, whereby the appellants Kameshwar Yadav and Manoj Yadav were convicted under Sections 148, 436, 149, 323, 380, 379 and 450 of the Indian Penal Code (hereinafter referred to the “IPC”) and were sentenced to undergo simple imprisonment for one year under Section 148 of the IPC, simple imprisonment of five years and



two months under Section 436/149 of the IPC. simple imprisonment of four months under Section 323 of the IPC and further simple imprisonment of two years under each Sections 380, 379 and 452 of the IPC. All the sentences were directed to run concurrently. Trial Court also convicted appellant nos. 3 to 6 under Section 452 of the IPC, however, they have been released on furnishing bond of Rs. 5,000/- under Section 4 of Probation of Offenders Act.

3. Prosecution case as per the *fardbeyan* of Pannalal Mahto recorded before police on 09.12.1998 at 09:00 A.M. in short is that while on 08.12.1998 at 7:00 A.M. he was sitting at his door, appellants came and demanded five thousand rupees on the plea that he had come from Punjab with lots of money. When the informant denied then the appellant and other accused persons assaulted him and took out five thousand rupees and also gold ornaments from the box. On alarm being raised by the informant, villagers assembled. However, the appellants by making firing succeeded in fleeing away. It is also alleged that the appellant and other accused persons took away his cattle and set the hut on fire and also set the house of one Shrawan Sada on fire. Further case of informant is that when he and others were going to report the matter to the police, they were stopped and threatened by Srikant Yadav and one Mushru Yadav to not lodge the case otherwise, they will be killed and only on the next day, a case for the occurrence was instituted.

4. On the basis of the aforesaid *fardbeyan* of the informant,



Kishanpur P.S.Case No. 143/98 was registered. Police after investigation submitted charge-sheet. Cognizance of the offence was taken and the case was sent to Judicial Magistrate -1st Class Supaul for commitment, who committed this case to the court of sessions on 25.11.99. Vide order dated 25.01.2001, the then Special Judge, Saharsa sent the matter back to the Chief Judicial Magistrate, Supaul for passing afresh order and for fresh direction for reinvestigation in terms of Rule 7 of SC/ST Rules on 24.02.2001, the learned Chief Judicial Magistrate, Supaul took cognizance and, thereafter, the case was transferred to Sub Divisional Judicial Magistrate, Supaul for commitment and ultimately the case travelled to the file of Shri Bipin Bihari Singh, Additional Sessions Judge, Saharsa for trial and disposal.

5. Charges were framed under Sections 148, 436/149, 323, 379, 452 of the IPC and under Section 3(2)(iv) of SC/ST (Prevention of Atrocities) Act. Prosecution in order to prove the charge has examined altogether seven witnesses. They are; PW1 - Sukhlal Mahto, PW2 - Harikant Rai, PW3 – Ganeshi Sada, PW4 – Narayan Sada, PW5 – Pannalal Mahto (informant), PW6 – Kumari Aitley, the Investigating Officer and PW7 – Namo Narayan Pandey, second Investigating Officer.

6. On behalf of the defence also, two witnesses were examined. They are DW1 - Bihari Yadav and DW 2 – Bachan Prasad Yadav.



7. Trial court on conclusion of trial convicted the appellant Kamakhya Yadav and Manoj Yadav under Sections 148, 436, 149, 323, 380, 379 and 450 of the IPC and sentenced them in the manner aforesaid. The Trial Court, however, acquitted all the accused persons from the charge under Section 3(2)(iv) of SC/ST (Prevention of Atrocities) Act and further convicted appellant nos. 3 to 6 under Section 452 of the IPC, however, they have been released on furnishing bond of Rs. 5,000/- under Section 4 of Probation of Offenders Act.

8. From perusal of the evidence, it appears that PW5 Pannalal Mahto is the informant of this case and he has supported the prosecution case in his evidence in chief and stated that the appellant came and demanded *rangdari* (extortion) of Rs. 5,000/- and on protest by him, appellants assaulted him and, thereafter on the order of appellant Kameshwar Yadav, appellants entered inside his house and took away Rs. 5,000/- and other ornaments. Appellant Manoj Yadav assaulted him by butt portion of the gun. Appellants Kameshwar Yadav and Manoj Yadav fired and started fleeing away. His evidence further disclosed that his house was set on fire and the box was taken away. His evidence further disclose that appellant Kameshwar Yadav had set the house on fire and the house of one Shrawan Sada was also set on fire. This witness has been cross-examined at length and he has stated that the ornaments were kept in the box and Rs. 5,000/- was



also there in the box. Evidence of this witness further disclosed in cross examination that there was scuffle between him and appellant Kameshwar Yadav, meanwhile, other appellants entered inside his house and taken away the articles and ornaments.

9. Evidence of PW1 also disclosed that appellant Kameshwar Yadav had assaulted the informant Pannalal Mahto by means of fists and slaps and some portion of sweater of appellant Kameshwar Yadav came in the hand of Pannalal Mahto and, thereafter, other appellants entered inside the house of informant Pannalal Mahto and later on this witness came to know that ornaments and Rs. 5,000/- were taken away by the appellants. Even in his cross-examination, this witness has stated that there was indiscriminate firing and there was stampede and, therefore, he came to know that the house was set on fire.

10. PW2 also supported the case of prosecution and stated about assault by Kamleshwar Yadav to informant and setting the house of informant Pannalal Mahot and Sharwan Sada on fire and later on he heard that the appellants entered into the house and taken away the money. However, evidence of PW2 disclosed that he had not seen the person as to who set the house on fire.

11. PW3 has also supported the case of prosecution and stated about assault to Pannalal Mahto and setting the house of Pannalal Mahto and Sharwan Sada on fire and taking away the ornaments by the appellants. His evidence further disclosed that he has not seen as



to who set the house on fire.

12. Evidence of PW4 also supports the allegation of assault to Pannalal Mahto and looting away the articles. His evidence also disclosed that the informant raised alarm, thereafter, the appellants fled away.

13. PW6 is the Deputy S.P., who conducted the investigation. His evidence disclosed that the house which was set on fire was made of straw and the articles that were damaged were the daily use articles.

PW7 is also one of the Investigating Officers.

14. On perusal of the evidence of prosecution evidence, it appears that there are consistent evidence available on record so far assault is concerned and also setting the house on fire and looting away the articles from the house and cash from the house of informant Pannalal Mahto. On behalf of defence also, three witnesses have been examined and according to them the fire took place due to *Bhura* and there was no marpit. Considering the evidence of defence witnesses, so far the occurrence of setting the house on fire is admitted and the evidence of Deputy S.P. also shows that in the said fire the daily use articles got burnt

15. Learned Amicus Curiae has assailed the judgment on the ground that evidence of witnesses disclosed that nobody had seen as to who set the house on fire and so far allegation of theft is concerned i.e. against appellant nos. 3 to 6 but the appellant nos. 1 and 2 were



also convicted under Section 380, 379 and 452 of the Indian Penal Code and the defence version is that the house got burnt accidentally. Learned Trial Court, however, has failed to appreciate these facts and convicted the appellants, which is out and out perverse and not sustainable in the eye of law. Further submission of learned *Amicus Curiae* is that the appellant nos. 1 and 2 have already remained in custody for about four years and one month and the occurrence is of the year 1998 and appellants have sufficiently been punished in this case and hence, a lenient view may be taken and the period of sentence may be reduced to the period already undergone by them in judicial custody.

16. Considering the evidences available on record, so far allegation with regard to assault to the informant, setting the house of informant and one Sharwan Sada on fire as well as looting away the articles is concerned, I find no infirmity in the conviction of the appellants under Section 148, 436, 149, 323, 380, 379 and 450 of the IPC. However, it appears from perusal of the record that appellant nos. 3 to 5 have been released on probation on execution of bonds of Rs. 5,000/- for a period of two years and they have already executed the bond and period of two years has also expired and so far appellant nos. 1 and 2 are concerned, the maximum sentence awarded to them is five years two months under Section 436/149 and other sections as all the sentences were directed to run concurrently and it appears that the



appellant nos. 1 and 2 have already remained in judicial custody for four years and ten months. As such, considering the case being old and also the fact that there is nothing on record to show that the appellant nos. 1 and 2 were previously convicted in any other case or have misused the privilege of bail, the sentence of the appellant nos. 1 and 2 is modified to the period already undergone by them in judicial custody.

17. With above modification in sentence, this appeal is dismissed.

(Vinod Kumar Sinha, J)

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