

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.584 of 2002

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

- =====
1. Amar Mandal son of Late Janardan Mandal (abated)
 2. Agam Mandal son of Late Janardan Mandal
 3. Mukti Mandal Son of Singheshwar Mandal
 4. Biro Mandal son of Singheshwar Mandal (abated)
 5. Lakru Mandal son of Singheshwar Mandal
 6. Medo Mandal son of Parmeshwar Yadav
 7. Pathal Mandal son of Pucha Mandal
 8. Parmeshwar Yadav son of Karu Yadav
- All residents of village- Gidha P.S.-Rupauli District Purnea

.... Appellants

Versus

State of Bihar

.... Respondent

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Appearance :

For the Appellants : Mr. Bhola Prasad, Adv.
Mr. Mukesh Kumar Jha, Adv.

For the Respondent : Mr. Bipin Kumar, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA

ORAL JUDGMENT

Date: 12-02-2018

All the appellants stand convicted under Section 147 and 426 of the Indian Penal Code and sentenced to undergo R.I. for one year and R.I. for three months respectively. Both the sentences were directed to run concurrently.

2. During pendency of the Appeal, it has been informed by the learned counsel for the appellants that some of the appellants died; as such a report was called for from the S.P., Purnea and report has been received (kept at flag 'X' of the petition), from which it appears that appellant nos. 1, 4 6 and 8 died during the pendency of the



appeal, hence, the appeal against them stands abated.

3. The prosecution case as appeared from the statement made by Bindeshwari Yadav (P.W.4) is that on 27.10.1984 at 06:00 A.M., the accused/appellants along with others came to his *darwaza* and started assaulting him and others and also damaged the crops, in which one ox also died. On the basis of aforesaid statement, Rupauli P.S. Case No.155 of 1984 was registered, however, it appears that after investigation, the Police submitted final form not finding the case true, however, the learned Magistrate has taken cognizance, treating the protest petition as complaint petition and the case has been committed, which ultimately travel to the court of Sri Jay Prakash Singh No.1, Additional District & Sessions Judge (Fast Track Court No.2), Purnia for trial and disposal.

4. In course of the trial, altogether nine witnesses have been examined, they are – P.W.1 Sattan Yadav, P.W.2 Arun Yadav, P.W.3 Banarsi Yadav, P.W.4 Bindeshwari Yadav, P.W.5 Banarsi Yadav, P.W.6 Dr. Krishna Nand Das, P.W.7 Govind Sahni, P.W.8 Neki Mandal and P.W.9 Chhotelal Mandal, out of them, P.Ws. 1 and 2 are injured witnesses and P.W.4 is the informant-cum-injured, P.W.3 has filed a complaint petition and claims to be eye witness, P.W.6 is the Doctor, who has done autopsy of the ox, P.Ws. 7 & 8 have been declared hostile and P.W.9 is the Munsif who has proved



Ext. Nos.2 and 3.

5. Defence of the appellants is of false implication and of innocence.

6. The learned trial court on conclusion of the trial has convicted the appellants under Sections 147 and 426 of the IPC and sentenced them as stated above.

7. Contention of the learned counsel for the appellants is that the prosecution has failed to prove the place of occurrence as in the evidence, some other place of occurrence has been stated and that will also appear from the complaint petition also and furthermore, no motive has been assigned for the present case. The Doctor who has treated the injured and the I.O. have also not been examined in this case, hence, non-examination of the Doctor and the I.O. has also caused prejudice as some of the witnesses claim to be eye witness – cum-injured witness and there is difference in the place of occurrence also and as the evidence is not consistent on the point of place of occurrence, as such the impugned judgment and the order is not free from inconsistencies & infirmities and is not sustainable in the eye of law.

8. On the other hand, learned counsel for the State has supported the judgment on the ground that there is sufficient and consistent evidence available on the record and the same can not be



disbelieved, in view of the fact that P.Ws.1, 2 and 4 are the injured in this case and P.Ws. 3 and 4 claim to be eye witness in this case and there is nothing in their evidence to doubt their credibility and P.W.6 is the Doctor who has done autopsy of the ox, which died during the occurrence and as such there is sufficient evidence to show that the appellants made unlawful assembly to damage the property of the informant and also caused damage to the informant by killing ox at the place of occurrence, hence conviction under Sections 147 and 426 of the IPC is just and proper and not required any interference by this Court.

9. On perusal of the evidenced it appears that P.W.4 is the informant in this case and supported the prosecution case as stated in the complaint petition and stated that all the accused persons came variously arm and started damaging the hut of the informant assaulted informant and others and also caused damage to the informant by killing his ox.

10. The aforesaid evidence finds support from the evidence of P.Ws. 1 and 2, who are also injured witnesses in this case and P.W.3 and 5 claim to be eye witness, hence there appears consistent and reliable evidence available on the record in support of the prosecution. No doubt doctor has not been examined, however, the trial court has not convicted the appellants under Section 323 of



IP.C. and moreover evidence forming unlawful assembly and mischief are consistent and credible.

11. In view of the discussions made above, there is no infirmities in conviction of the appellants. So far sentence is concerned, the appellants have been sentenced to undergo R.I. for one year under Section 147 of the Indian Penal Code and six months under Section 426 of the Indian Penal Code. However, submission of the appellants is that they have remained in custody during the trial for the period of one month and 27 days and the occurrence is of the year, 1984, hence, they suffered the rigor of trial and appeal for 33 years and there is nothing available against the conduct of the appellants. In view of the above submission, their sentence is reduced to the period already undergone.

8. With the aforesaid modification in the sentence, this Appeal is dismissed.

(Vinod Kumar Sinha, J)

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