

IN THE HIGH COURT OF JUDICATURE AT PATNA**Criminal Appeal (SJ) No.131 of 2015**

Arising Out of PS.Case No. -67 Year- 2012 Thana -MEERGANJ District- PURNIA

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Bisundeo Paswan, son of Late Bhadai Paswan, R/o Paswan Tola, Damaili, P.S. Mirganj, District Purnea

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

Appearance :

For the Appellant/s : Mr. Ajit Kumar Singh-Advocate

For the Respondent/s : Mr. Binod Bihari Singh- A.P.P.

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL JUDGMENT

Date: 19-01-2018

Appellant Bisundeo Paswan has been found guilty for an offence punishable under Section 147 of the I.P.C. and sentenced to undergo R.I. for one year as well as to pay fine appertaining to Rs.1,000/-, under Section 323 of the I.P.C. and sentenced to undergo R.I. for six months as well as to pay fine appertaining to Rs.5,00/-, under Section 332 of the I.P.C. and sentenced to undergo R.I. for two years and six months as well as to pay fine appertaining to Rs.2,000/-, under Section 353 of the I.P.C. and sentenced to undergo R.I. for one year three months as well as to pay fine appertaining to Rs.1,000/- with a further direction that in default of payment of fine to undergo S.I. for three months, additionally, with a further direction to run the sentences concurrently with a further direction that the period already undergone during course of trial would be set off in accordance with



Section 428 of the Cr.P.C. vide judgment of conviction and sentence dated 28.01.2015 passed by the Additional Sessions Judge-3rd, Purnia in Sessions Trial No.593 of 2013.

2. PW-4 Bipin Kumar, S.I. Dhamdaha Circle recorded his own fard-bayan on 12.12.2012 at about 6.00 p.m. alleging inter alia that on the same day at about 10.00 a.m., he received confidential information that Bisundeo Paswan, son of Late Bhadai Paswan, village-Damaili Paswan Tola, P.S. Mirganj, who happens to be an accused of Mirganj P. S. Case No.65 of 2012, who is vigorously indulged in grabbing land of others after provoking the members of the Scheduled Castes/ Scheduled Tribes, was at his Wasa along with other companion manipulating the scheme for grabbing the land and during course thereof, may use the women as well as children and as Deputy Superintendent of Police was on leave on account thereof, he after informing, instructing all the concerned police station falling within his jurisdiction for their presence along with police personnel, female police personnel, female chaukidar etc. at Mirganj P. S. at about 12.30 p.m. Then thereafter, under the leadership of O/c Mirganj namely Bindeshwari Paswan, a team was constituted and then, they proceeded in order to cordon as well as apprehend Bisundeo Paswan. At about 1.45 p.m., when they arrived, Bisundeo Paswan and his associate began to beat drum seeing them, whereupon large number of



female, male belonging to S.C./S.T. armed variously appeared and then, attached upon the police personnel during course thereof, so many police personnel sustained injury. They have also snatched away the carbine, two magazine loaded with the cartridges and other items. They have also assaulted Laxmi Prasad Chaudhary and Rahul Chaudhary of village-Damaili and had also put their motorcycle on fire. Then thereafter, they were supplemented with the additional police force from the headquarter whereupon, they got themselves rescued. During course thereof, at the instance of local Chaukidar, they have identified Dhaneshwar Paswan, Sanjay Paswan, Uma Paswan, Bisundeo Paswan, Batohiya Paswan, Maheshwar Paswan, Nipu Paswan, Jetha Hembram, Sunil Murmu, Neta Murmu, Sanjay Tudu and Bishundeo Rishi amongst the members of the mob. Furthermore, it has also been disclosed that one female has also sustained injury, who has been lifted and taken away by the members of the unlawful assembly.

3. On the basis of the aforesaid self-statement of the informant, Mirganj P. S. Case No.67 of 2012 was registered followed with an investigation during course of which, only appellant has been arrested, on account thereof, keeping the investigation pending against others, chargesheet was submitted against the appellant, whereupon the trial commenced and culminated in a manner, the 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 further been asserted that he happens to be victim of police atrocities. To substantiate the same, three DWs have also been examined.

5. In order to substantiate its case, prosecution had examined altogether nine PWs, who are PW-1 Hav. Rasik Hembrum, PW-2 Milan Kumar, PW-3 Sayed Wasi Ahmad, PW-4 Bipin Kumar, PW-5 Deepankar Shri Gyan, PW-6 Dr. Shashank Kumar, PW-7 Upender Singh, PW-8 Amlendu Kumar Choudhary and PW-9 Ratandev Prasad Sah. Side by side, had also exhibited the documents, viz. Exhibit-1 signature of Bipin Kumar over Fard-bayan, Exhibit-1/Advocate the signature of B.B. Paswan on fard-bayan, Exhibit-2 series, injury reports, Exhibit-3 self-statement of Bipin Kumar, Exhibit-4 signautre of PW-8 over seizure list and Exhibit-4/a signature of PW-9 over seizure list. As stated above, Defence had also examined three DWs, who are DW-1, Devan Paswan, DW-2 Goberdhan Paswan and DW-3, Amol Kumar Yadav.

6. Learned counsel for the appellant while challenging the judgment impugned has submitted that from the self-statement of the informant itself, it is evident that whole episode has been commanded



at the instance of informant of Mirganj P. S. Case No.65 of 2012 in the background of the fact that in spite of having the aforesaid case instituted only one day prior to the present occurrence and further, informant was not at all Investigating Officer of the aforesaid case, even then, he had remarked that appellant happens to be land grabber, which during course of trial has not been substantiated by the prosecution. That being so, the instant prosecution happens to be malafide as, the status of appellant to be indulged in nefarious activity is not at all proved. The second thing over which the learned counsel for the appellant drew the attention is that intentionally, purposely, F.I.R. was kept at his end in order to give additional support in order to make out the offence more severe and for that, it has been submitted that there happens to be specific disclosure at the end of the informant that members of the mob snatched away carbine, magazine, but from the seizure list, it is evident that the recovery happens to be on the same date of alleged occurrence from a place where arms were kept. Had there been such kind of activity, then in the background of the fact that prosecution party were completely knocked down at the end of the appellant along with his associate having duly armed, which they used causing injuries to the respective police personnel, then in that circumstance, carbine would not have been left unused. Furthermore, it has also been submitted that there happens to be



disclosure that the members of the mob were armed with poisonous arrow, which were blown during course of occurrence in order to rescue the appellant, but injuries have been alleged to have sustained by the police personnel, having been caused by the poisonous arrow. In the aforesaid background, referring Exhibit-2 series, the respective injury reports, it has been submitted that these injury reports have purposely been manufactured, procured at the end of the informant to justify their illegal activities.

7. Now, coming to other aspect, it has been submitted that in accordance with Section 101 of the Evidence Act, it happens to be an obligation on the part of the prosecution to substantiate the case beyond reasonable doubt. From the evidence of the informant and other police personnel, it is apparent that police personnel, officials of so many police stations were directed to assemble at Mirganj Police Station wherefrom raiding party was constituted under the leadership of O/c of the Mirganj P.S. and further, as per police manual, whenever police official leaves the police station, then in that circumstance, he has to record such eventuality in the station diary to enable the other official so present to discharge function of the Officer-in-Charge. But in the instant case, no such station diary has been exhibited to connect presence of police officials at the place of appellant along with informant. In likewise manner, also submitted that there happens to be



disclosure at arrival of additional police force by the headquarter, which also not been substantiated conclusively. Apart from this, none of the witnesses have deposed that search was conducted, any kind of incriminating substance was recovered. They have also kept silence whether Mirganj P. S. Case No.65 of 2012 was registered under non-bailable offence. It has also been pleaded that at least there should have been presence of connecting evidence that means to say, seizure of the weapons at least the arrow by which police personnel sustained injury, drum which is said to have been beaten by the appellant and others to call his followers and in likewise manner, the other eventualities having been perceived during course of alleged occurrence. So, submitted that neither the police personnel have gone to the Wasa of the appellant and so, there was no occasion to prevent the members of the prosecution party (public servant) to exercise their function/ due discharge of their duty, whereupon the judgment of conviction and sentence recorded by the learned lower Court did not justify its propriety.

8. On the other hand, learned Additional Public Prosecutor while controverting the submission made on behalf of the learned counsel for the appellant has submitted that whatever argument has been raised/ made on behalf of learned counsel for the appellant appears to be non-permissible in the eye of law in the



background of the fact that none of the witnesses was cross-examined on that very score. Had there been, then in that circumstance, witnesses might have an opportunity to explain the same. Now, coming to the evidence on the record, it has been submitted that witnesses properly substantiated the case of the prosecution and that being so, the judgment of conviction and sentence recorded by the learned lower Court happens to be fit to be confirmed.

9. From the record, it transpires that the self-statement of the informant was recorded on 12.12.2012, but the same was received at the end of the Chief Judicial Magistrate's Office on 14.12.2012, that means to say, beyond the period of 24 hours as prescribed under Section 157 of the Cr.P.C. In the aforesaid background, now first of all, evidence of PW-4, informant is to be taken. He had deposed that on 12.12.2012, he was Police Inspector of Dhamdaha Circle. On the same day at about 10.00 a.m., he received confidential information that the leader of the land grabber namely Bisundeo Paswan is planning to grab two kattha lands of Dhanwati (Janjaati) against whom, Mirganj P. S. Case No.65 of 2012 has been registered since before wherein he happens to be absconder. There was intelligence input that he may seek protection of children as well as female folk, whereupon, he had directed the police officials of different P.S. having within his jurisdiction to assemble at Mirganj P. S. along with



police personnel as S.D.P.O. was on leave. On his direction, O/c of Dhamdaha P. S. Upendra Singh along with A.S.I. Lalan Paswan, Amit Kumar, Nitesh Kuma, S.H.O. Bhawanipur, A.S.I. Rakesh along with armed constable, A.S.I. Murari Sharma along with B.M.P. Constable, other police officials of other Police Station (so detailed) came. Under the leadership of O/c Mirganj P.S., a raiding team was constituted and then, they proceeded. At about 1.45 p.m., they cordoned Wasa of Bisundeo Paswan to arrest him. During course thereof, Bisundeo Paswan instructed his associate to beat drum, who accordingly beat drum, whereupon so many persons including male, female, children armed with bow and arrow, lathi assembled and attacked upon the police personnel. Seeing children as well as female, they have not retaliated. Then thereafter, they began to pelt stones as a result of which, members of the police party scattered. Then they began to chase and during course thereof, he sustained arrow injury while other police personnels were also assaulted. Then thereafter, accused persons snatched away carbine, magazine. Seeing the alarming situation senior police officials were informed. Accordingly, they were joined by additional police force. They have also fired in self-defence as a result of which, the unlawful assembly scattered there from. During course of aforesaid activity, one of the villagers also sustained injury. He prepared his self-statement, claimed



identification of the persons including appellant at the spot (exhibited). He was cross-examined under Para-3 with regard to any kind of entry having been made at their end over any register, whereupon, he shown ignorance as well as he also declined to have entered the same on his own. In Para-4, he had stated that two cases were pending since before against the appellant, but he failed to disclose the number of the other cases, save and except Mirganj P. S. Case No.65 of 2012. He had further admitted that he had not supervised the above mentioned case. In Para-5, he had stated that he had made statement before the I.O. at the P.O. itself. He had further stated that appellant had grabbed land of 2-3 persons, out of whom, he named one of them as Amresh, but failed to name others. In Para-6, he had stated that before proceeding ahead, he had orally informed the S.P., Purnia. In Para-7, he had further stated that he is not aware with the fact whether a station diary entry has been made in Mirganj P.S. regarding their departure to the P.O. land. In Para-8, he had stated that he had meeting with Bisundeo Paswan at his office at an earlier occasion, but he is not remembering the cause. Then again corrected, prior to the alleged occurrence Bisundeo Paswan had met with him at his office. When they reached at the place of occurrence, they met with more than hundred persons. As soon as they reached, drum was beaten and then, there was pelting of stone. They could not identify,



who had pelted the stone, but again corrected that they have been able to identify some of them. They chased, whereupon mob began to blow poisonous arrow. They were about 50 in numbers, one of the family members of the mob had also sustained injury. Then had denied the suggestion that they committed police highhandedness during course thereof, so many female were brutally assaulted. In Para-12, he had stated that he had identified 5-6 persons of the resident of village of Bisundeo Paswan. In Para-13, he had stated that he had visited the village 2-3 times since before the occurrence on account of land dispute. Then had stated that, who amongst the members of the mob was doing what job, he is unable to say.

10. PW-5 had stated that on 12.12.2012, he was O/c of Rupauli P.S. On that day, an occurrence took place at village Damaili, P.S. Mirganj in a field. It was 1.00 p.m. Police Inspector, Dhamdaha Circule informed him that some anti-social elements are taking illegal possession over the land so, they should arrive, whereupon he along with armed police personnel reached at Dhamdaha Police Station and then, to Damaili village where they saw large number of Scheduled Tribes' Members were present under the leadership of Bisundeo Paswan, who began to beat drum seeing the police personnel. They attacked upon police personnel with bow and arrow, thrown brick particles, also pelted stones, whereupon some police personnel



sustained injury. Carbine along with magazine of Rasik Hembrum and Shyam Tiwari were snatched away by the miscreants. Then headquarters was informed and after arrived of additional force, they were chased away. Police also fired five rounds in their self-defence. During course of fleeing, magazine of Murari Sharma fell down, which was also taken away by the miscreants. Also assaulted Rahul Choudhary. In order to grab the land, the accused persons indulged in such kind of activity. During cross-examination, he had stated at Para-3 that before leaving Police Station, he had not taken permission from the S.P. In Para-4, he had stated that first of all, he reached at Dhamdaha P.S. where Police Inspector was present. Police officials of other police station had also reached at Dhamdaha P.S. Then, they reached at Mirganj P.S. where O/c of Mirganj P.S. joined them. They reached at the P.O. at 1.00 p.m. He had further stated at Para-6 that he had not visited the P.O. village since before, he was not identifying the resident thereof, O/c of Mirganj P.S. had disclosed. In Para-7, he had stated that there was land dispute, but he is unable to say the name of the party and in likewise manner, details of the land. He had further stated that when they reached at the P.O., 80-85 persons were present, but is not in a position to divulge names of all the persons. He could divulge name of one person only. In Para-8, he had stated that he met with the appellant Bisundeo Paswan at the Sub-divisional Office, but



he is unable to say the date and time.

11. PW-7 had deposed that on 12.12.2012, he was O/c of Dhamdaha P.S. He had further stated that Police Inspector, Dhamdaha had informed Officer-in-Charge of all the Police Stations that accused of Mirganj P.S. Case No.65 of 2012 namely Bisundeo Paswan is preparing to commit an offence with the help of other anti-social elements, whereupon all the Officer-in-Charge along with armed police personnel arrived at Mirganj Police Station where they were informed that occurrence is going to be committed at village-Damaili. Accordingly, police party had gone to village-Damaili. Seeing the police party, there was beating of drum, whereupon the anti-social elements, who were present since before appeared having armed with sword, lathi, bow-arrow and began to blow the arrow over the police personnel. Some of the police personnel sustained arrow injury. Some of the members of the anti-social elements also snatched away carbine, magazine. Then, superior police officials were informed. They have fired in their self-defence and then, returned back. During cross-examination at Para-5, he had stated that he was informed by the Police Inspector, Bipin Kumar regarding the aforesaid activity. He came along with 12 police personnel, but again said, he is unable to say exact number. He had further stated that he had recorded Station Diary Entry. He had further admitted that he had not taken permission



from the S.P. In Para-8, he had stated that when they reached at village, they have seen assembly of 100-150 people, who seeing the police, began to beat drum, whereupon others, who were nearby assembled. They consist children, female. They began to blow arrow, but he is unable to disclose the exact activities. After sustaining injury, they dispersed there from and reached near bridge 250 meters away from the alleged P.O. He had further stated that during course of occurrence, the respective drivers disappeared with the vehicle. In Para-11, he had stated that 5-7 persons sustained injury, but he is unable to disclose their names, one female Bhawani Devi, had also sustained injury. He had further stated that Bisundeo Paswan had met with him at S.D.M. Office in connection with a case. Then at Para-17, he had admitted his house as well as house of Police Inspector lies by the side of each other and there was good relation between them.

12. PW-8 and PW-9 are the seizure list witnesses relating to seizure of carbine, which was lying beneath a tree in an abandoned condition on 12.12.2012 itself.

13. PW-2 had deposed that on the alleged date i.e. 12.12.2012, he was Officer-in-Charge of Bhawanipur. As directed by the Police Inspector, Dhamdaha Circle, Bipin Kumar, he along with other police officials of different police station came and then, they gone to village-Damaili where they found 70-80 persons including



male and female near Bisundeo Paswan. After beating of drum, they attacked upon police party as a result of which, Bipin Kumar, Upendra Singh and other police personnel got injured. During midst thereof, carbine and magazine of Constable Rasik Hembram, Shyam Bihari Sharma were looted away. They have also taken away magazine of Constable Murari Sharma. Then thereafter, they back, arms were recovered in the night and for that, seizure list was prepared over which he had put his signature. In Para-3, he had stated that before leaving Police Station, he had made station diary entry. In Para-4, he had stated that first of all, they assembled at Dhamdaha Police Station from there they have gone to Mirganj. He had further stated that he had not gone to village-Damaili before 12.12.2012. He was not identifying Bisundeo Paswan since before. He identified only after having been called by his associate as Bisundeo Paswan. He had not seen Bisundeo Paswan since before the occurrence. At that very moment, 70-80 persons were present. He had identified only Bisundeo Paswan as he was the main leader. He had got no information regarding land dispute. He had got no personal knowledge regarding the occurrence.

14. PW-1 is the Police personnel, who had stated that as directed, they have gone to protect the land. When they reached at the P.O., they found land was being ploughed. Seeing police, there was



beating of drum, whereupon 15-20 persons came out, who pelted stones, blown the arrow. They were assaulted and then, took away one carbine, two magazines. Then, they took him away in a hut, then again assaulted. He became unconscious. Police personnel from different police station also came, who also sustained injury. Anyhow, they were rescued and taken to hospital. He had not identified the accused. He had further stated that he is unable to say, who had assaulted whom.

15. PW-3 is the I.O., who had deposed that after having entrusted with the investigation of the case, he recorded further statement of the informant. He had gone to the place of occurrence. He had gone to search out the snatched arms and ammunitions and recovered it for which, prepared seizure list, recorded statement of the witnesses and then, submitted chargesheet. During cross-examination, he had stated that he had not recorded statement of any witness of the locality. Again at Para-8, he had reiterated the same. He had further stated that all the witnesses happen to be police personnel. At Para-10, he had stated that in Para-7 of the case diary, he had incorporated the fact that as it was dead of night, therefore, P.O. had not been inspected. Then, there happens to be some sort of contradiction relating to Bipin Kumar (PW-4) over identification of Bisundeo Paswan. In Para-13, he had stated that brother of Bisundeo Paswan



happens to be Chaukidar and so, he identifies him. He had further stated in Para-14 that he had not recorded statement of Bhawani Devi. In Para-18, he had further stated that he had not investigated with regard to any kind of dispute having with Abhishek Chaudhary.

16. Three DWs have also been examined, who happens to be worthless in the background of the fact that they have simply said that they found Bisundeo Paswan was going to Purnia in order to get bail relating to a case. In evening hour, they have seen him. However, neither any document has been filed on behalf of appellant to substantiate the same, nor there happens to be specific disclosure that he surrendered and got enlarged on bail on 12.12.2012, by a Court at Purnia that means to say, plea of alibi is not at all found substantiated.

17. From the evidence available on the record, it is evident that the prosecution was not at all confident with regard to their activity wherein they indulged on the alleged date and time of occurrence at village-Damaili and the worst part happens to be collusive investigation having been conducted by the PW-3, who during examination-in-chief had not disclosed the description/topography of the P.O. His activity is found exposed during course of cross-examination whereunder his attention has been drawn towards different paragraphs of the case diary wherefrom it is evident that he



never visited the place of occurrence. Had there been, then in that circumstances, the pelted stones, arrow would have been found. Furthermore, it suggests that I.O. had not gone to the village, then in that circumstance, snatching of arms and ammunitions, recovery thereof, also became doubtful. Not only this, I.O. had got collected material regarding deployment of additional police force by the headquarter, as well as order of the informant, whereunder firing made by the police personnel, as disclosed, became suspicious. In likewise manner, non-mentioning of S. D. Entry at least of Mirganj P.S., is additional circumstance putting jolt to prosecution case.

18. Now, coming to second aspect, although, PW-4, informant had stated that he got confidential information with regard to illegal activity whereunder appellant Bisundeo Paswan was going to grab the land with the active cooperation of his associates and further, there happens to be disclosure at the end of the respective witnesses that they were accordingly instructed, who came, participated in the raiding party, gone to the P.O. village upto Wasa of Bisundeo Paswan where they faced retaliation and then, they withdrew. Furthermore, it is evident that the P.O. lies within the Mirganj jurisdiction. PW-3 (I.O.) happens to be from the Mirganj P.S., but none of the police officials from the Mirganj Police Station has been examined in this case and that happens to be an intentional



act, because of the fact that had there been, then in that circumstance, the Mirganj Police officials was under obligation to say whether he had received confidential information with regard to illegal activity of Bisundeo Paswan or not. Furthermore, whether Bisundeo Paswan was wanted in a non-bailable offence relating to Mirganj P.S. Case No.65 of 2012? The prosecution happens to be so callous that they have not disclosed even the Section whereunder Mirganj P.S. Case NO.65 of 2012 was registered. In likewise manner, had there been examination of the police officials of the Mirganj P.S., then in that circumstance, there would have been a concrete evidence with regard to activity of the police official, who, apart from being a public officer, have engaged in due discharge of their duty wherein hindrance was caused at the end of the accused under the leadership of appellant Bisundeo Paswan attracting Section 353 of the I.P.C. and further, their appearance at the P.O. would have justified application of other allied Sections whereunder appellant has been convicted and sentenced for.

19. The evidence of PW-6, doctor, at the present moment, also to be taken into consideration, who had examined the respective injured on 12.12.2012 and found the following:-

Bhawani Devi

- *Multiple bruise positive all over the body, red in colour, ranging of 4x2 c.m. to 2 x 1 c.m.*



- *Abrasion in the right side of wrist.*

No bony injury seen. He opined the injury caused by blunt and simple in nature.

Shyam Bihari Sharma

- *Incised wound positive in left side of parietal region of his scalp 2x1 c.m., active bleeding, skin deep seen.*
- *Abrasion red in colour in interior aspect of left knee, size 2 x 2 c.m.*
- *Abrasion positive in the right aspect of lower 1/3rd of leg.*
- *Generalized body pain.*

He opined the injuries number '1' caused by sharp weapon and other injuries by blunt, caused within 24 hours and nature simple.

Lalita Devi

- *Generalized body pain.*

Rasik Hembrum

- *Bruise positive all over the body, reddish colour size 5 x 2 c.m. to 3 x 1 c.m.*
- *complaining of pain and tenderness right knee leg with the reddish bruise positive in right leg,*



*caused by blunt weapons and simple in nature,
within 12 hours.*

Srikant Pandey

- *One incised and penetrative wound over posterior aspect of right middle leg. No.1- penetrating wound caused by foreign matter arrow. This was removed under local anesthesia and handed over to police, size 2 x 1.5 c.m. depth up to bone, active bleeding, type of injury incised sharp on posterior aspect of middle of right leg, nature simple.*

From the injury report of the respective injured being part of the record under Exhibit-2 series, it is evident that he examined the respective injured on 12.12.2012 at 2.30 p.m. From the injury report, it is evident that none other than Srikant had sustained arrow injury. So far Srikant is concerned, he has not been examined. Furthermore, from the evidence, it is apparent that occurrence took place on 12.12.2012 at 1.30 p.m., then how the doctor got the respective injured examined at 2.30 a.m. on 12.12.2012. That means to say, injury was sustained by the injured before commission of occurrence.

20. That being so, giving critical analysis of the evidence available on the record, it is found and held that prosecution could not



succeed in substantiating its case beyond reasonable doubt, whereupon judgment of conviction and sentence recorded by the learned lower Court is set aside. Appeal is allowed. Appellant is on bail, hence is discharged from its liabilities.

(Aditya Kumar Trivedi, J)

Vikash/-

AFR/NAFR	A.F.R.
CAV DATE	N.A.
Uploading Date	24.01.2018
Transmission Date	24.01.2018

