

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.18 of 2011

1. Rampati Yadav, Son of Late Raj Kumar Yadav, Resident of Village Kanchanpur Tole-Daljit Bigha, P.S. Baroon, District Aurangabad
2. Dashrath Yadav, Son of Sri Binda Yadav, Resident of Village Mirpur, P.S. Kutumba, District Aurangabad
3. Binod Yadav, Son of Sri Rampati Yadav, Resident of Village Kanchanpur, Tole- Tarauna, P.S. Barun, District Aurangabad
4. Satyendra Yadav, Son of Sri Yadunandan Yadav
5. Rajendra Yadav, Son of Sri Yadunandan Yadav
- Appellant Nos.4 and 5 both resident of Village Kusa, P.S. Baroon, District Aurangabad
6. Laldeo Yadav, Son of Sri Bhadai Yadav, Resident of Village Badri Bigha, P.S. Aurangabad (M), District Aurangabad
7. Pramod Yadav, Son of Sri Rampati Yadav, Resident of Village Kanchanpur, Tole-Daljit Bigha, P.S. Baroon, District Aurangabad
8. Bahadur Yadav, Son of Sri Prasad Yadav, Resident of Village Ajaniya, P.S. Baroon, District Aurangabad

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Rajesh Kumar Sharma, Advocate
For the State	:	Mr. Abhay Kumar, APP

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR

ORAL JUDGMENT

Date : 06-02-2018

Heard learned counsel for the appellants and the learned APP for the State.

2. The appellants have preferred this appeal against the judgment of conviction and order of sentence dated 09.12.2010, passed by learned Additional Sessions Judge, Fast Track Court No.-III, Aurangabad in Sessions Trial No.98 of 2006/172 of 2010 convicting all the appellants under Sections 452/34 and 323/34 of



the Indian Penal Code however, acquitted from the charge under Sections 326/34 and 307/34 of the Indian Penal Code and sentenced to undergo SI of two years for committing offence under Sections 452/34 of the Indian Penal Code and six months of SI each for committing offence under Sections 323/34 of the Indian Penal Code however, directed to run both the sentenced concurrently. The appellants being aggrieved with the aforesaid judgment and sentence have preferred this appeal.

3. The brief facts giving rise to the prosecution case is that Ramgati Yadav, the informant (PW5), in injured condition in the Sadar Hospital, Aurangabad gave *fardbeyan* on 08.10.2004 alleging that in the previous night at about 11.30 P.M. he was sleeping in his house along with other family members. In the meanwhile, his elder brother Rampati Yadav, one of the accused, and other accused persons all related with Rampati Yadav trespassed into his house and Pramod Yadav gave an iron rod blow. They all assaulted the family members. Pramod Yadav gave an iron rod blow on the head of the informant causing injury. Again Satyendra Yadav also caused cut injury, Laldeo Yadav assaulted informant's wife by *Garasa* causing injury, Rampati Yadav gave knife blow on the son of the informant, Rajendra Yadav also assaulted the family members, he also opened fire and



taken away the box from the house of the informant wherein some precious jewelleries, sarees and Rs.15,000/- were kept. Motive for committing the occurrence as alleged is dispute over partition of the family property.

4. On the basis of the statement of the informant, police instituted a formal FIR bearing Baroon P.S. Case No.196 of 2004 against all eight named accused persons, started investigating the case and submitted charge-sheet, cognizance was taken in the matter and thereafter case was committed to the court of sessions as the charge-sheet was also submitted under Section 307 of the Indian Penal Code, which is triable by a court of sessions.

5. Learned counsel for the appellants submits that out of five witnesses examined in this case by the prosecution, two witnesses PW2 Dharamdeo Singh and PW3 Jagarnath Singh have turned hostile and even PW1 Bhikhar Singh though not declared hostile, has not supported the case of the prosecution and rest others are interested witnesses and PW1 has deposed that when he reached there he heard that some thieves had entered into the house and committed offence. Further submission is that neither the injury report was brought on record nor the doctor or the I.O. were examined.



6. Learned counsel for the State submits that the charge under Sections 307 and 326 of the Indian Penal Code already failed because of not bringing the injury on record as evidence by the prosecution; however, the charge of house trespass and assault is proved causing hurt to the informant side and the injured in this case Santosh Yadav (PW4), son of the informant, and Ramgati Yadav (PW5), the informant both have supported the prosecution case that accused persons trespassed into the house in the night armed with *Garasa* and knife and injuries inflicted so they were admitted in the hospital.

7. However, the prosecution has failed to bring on record the injury report and the doctor also was not examined, so in this eventuality the charge under Sections 326 and 307 of the Indian Penal Code failed before the trial court but the charges under Section 452, the trespass, after preparing for hurt as well as charge under Section 323 are proved. The prosecution evidence proves existence of partition dispute between the full brothers informant Ramgati Yadav and Rampati Yadav, one of the accused. However, the prosecution has not brought on record evidence showing that the accused persons had previously been convicted in any other case by a court of law, so considering the nature of dispute, the close relationship between the informant and the accused persons,



as the dispute is between two full brothers and the clean antecedent of the accused persons moreover, the occurrence being of the year 2004, means 14 years back, so in these circumstances instead of sentencing them at once to any punishment giving benefit of Section 4 of the Probation of Offenders Act the Court finds it is expedient to release them on probation of good conduct, so all are directed to be released on furnishing bail bond of Rs.10,000/- (ten thousand) with two sureties of the like amount each to the satisfaction of the court below to keep peace and be of good behaviour to appear and receive sentence when called upon within a period of two years and in the meantime, to keep peace and be of good behaviour.

8. With the aforesaid modification in sentence, the appeal stands disposed of.

(Arun Kumar, J)

S.KUMAR/-

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