

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Revision No.839 of 2017

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1. Vishwanath Thakur, S/o Kishori Thakur, R/o Village- Tarwamagarpal,
P.S.- Dariyapur, Distt- Saran.

.... Petitioner/s

Versus

1. The State of Bihar.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Udai Shankar Singh

For the Informant : Mr. V.R.P. Singh

For the State : Mr. Sri Anuj Kumar Srivastava

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
ORAL ORDER

5 24-01-2018

I.A. No. 2032 of 2017

For the reasons stated in the application, the delay of
68 days in preferring the present revision petition is condoned.

The application stands allowed.

Cr. Revision No. 839 of 2017

Heard the learned counsels for the petitioner, the
opposite party no. 2 and the State.

The petitioner has challenged the judgment and
order of conviction and sentence dated 20.02.2016 passed by the
learned 2nd Assistant Sessions Judge, Saran at Chapra in S.Tr. No.
211/2004, arising out of Dariyapur P.S. Case No. 02 of 2003,
whereby he has been convicted and sentenced to undergo S.I. for
one year for the offence under Sections 323/149 of the Indian



Penal Code and S.I. for one year for the offences under Sections 147 and 148 of the Indian Penal Code each, the sentences having been ordered to run concurrently as well as against the judgment and order dated 22nd of February, 2017 passed by the 1st Additional Sessions Judge, Saran at Chapra in Cr. Appeal No. 8 of 2016, whereby the judgment and order of conviction and sentence by the trial court has been affirmed and upheld as follows.

Learned counsel for the petitioner has submitted that the two prosecution witnesses, viz. P.W. 1 and P.W. 2 are interested witnesses and they are inimical to the petitioner and others and therefore, their evidence ought to have been scrutinized with greater care and circumspection. It was also pointed out that the aforesaid witnesses are not eye-witnesses to the occurrence because P.W. 6 had stated that they had reached the place of occurrence along with him and he himself had reached the place of occurrence after the assault.

Learned counsel for the petitioner has further argued that so far as the sentence against the appellant is concerned, that is rather harsh, if seen in the background of the nature of accusation and both the courts ought to have released the petitioner under the Probation of Offenders Act because of this being his first conviction.



From the records, it appears that P.Ws. 1 and 2 were present near the place of occurrence and on cry of help, they rushed to the place of occurrence and therefore, it cannot be said that they were not the witnesses to the assault. Merely because P.W. 6, who is the son of the informant, has deposed that he reached along with P.Ws. 1 and 2 to the place of occurrence after the assault, the deposition of the aforesaid prosecution witnesses cannot be completely discarded.

P.W. 11, the doctor, has proved the injuries found on the person of the victim. The injuries are by a sharp cutting weapon and on the parietal region of the scalp.

No good ground has been raised by the learned counsel for the petitioner for differing with the judgment of conviction by both the courts below.

However, considering the background of enmity and the nature of accusation, this Court is of the view that interest of justice would be met if the sentences imposed upon the petitioner are reduced to the period of the six months for each of the offences concurrently under which the petitioner has been held guilty.

Thus, it is accordingly ordered that the sentences imposed upon the petitioner be reduced to a period of six months



under each of the counts and all the sentences shall run concurrently. The period for which the petitioner has remained in custody shall be set off from the aforesaid period of imprisonment.

The petitioner is stated to be in custody. He shall be released forthwith after he completes the period of six months in custody, if not wanted in any other case.

Accordingly, the revision petition is partially allowed with the modification in the sentence.

(Ashutosh Kumar, J.)

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