

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.3040 of 2017

Arising Out of PS.Case No. -52 Year- 2012 Thana -SC/ST District- NALANDA (BIHARSHARIFF)

- =====
1. Lala Prasad, S/o Awadhesh Prasad,
 2. Brije Mahto S/o Ramsahay Mahto,
 3. Lala Prasad S/o Mahesh Prasad,
 4. Anugrah Prasad S/o Lakhan Mahto,
 5. Sunil Prasad S/o Suresh Prasad,
 6. Munna Prasad S/o. Awadhesh Prasad
- All resident of village- Mai, P.S. Hilsa, District- Nalanda

.... Appellant/s

Versus

1. The State of Bihar.
2. Vikash Paswan S/o. Sri Ambika Paswan R/o Village- Mai, P.S.- Hilsa, District- Nalanda.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Ajay Mukherjee, Advocate
For the Respondent/s : Mr. Usha Kumari No.1, SPP

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR

ORAL JUDGMENT

Date: 29-08-2018

Heard learned counsel for the parties.

The appellants have challenged the order of cognizance dated 07.04.2016 passed by learned Additional Chief Judicial Magistrate, Hilsa, Nalanda, in Hilsa P.S. Case No.52 of 2012, corresponding to G.R. No.1774 of 2012, whereby cognizance has been taken against the appellants for the offences under Sections 147/149/341/323/324/504 of the Indian Penal Code and Section 3(i)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

The challenge is on the ground that similarly situated co-



accused Gariban Mahto had challenged the impugned order of cognizance before the learned Sessions Judge in Cr. Revision No.61 of 2016 and the learned Additional Sessions Judge-I, Hilsa, who heard the matter allowed Cr. Revision of co-accused Gariban Mahto vide his order dated 07.01.2017 at Annexure-2.

According to FIR, initially appellant No.1 Lala Prasad son of Awadhesh Prasad scuffled with the informant and committed abuse by taking his caste name and attempted to commit his murder by catching the neck. When other members of the scheduled caste reached there, appellant Lala Prasad fled away and again came back along with other appellants including Gariban Mahto and started abuse. They all entered into the house and committed assault against female members of the family as well as ransacked the household articles and committed theft. Witnesses Ambika Paswan in para-5 of the case-diary, Sonu Kumar in para-7 of the case-diary and Sakuntala Devi in para-8 of the case-diary and witnesses Satyendra Paswan and Mina Devi in paras-9 and 10 of the case-diary have supported the case as eyewitness of the occurrence.

Learned counsel for the appellants submits that all the aforesaid witnesses are family members of the informant. The learned 1st Additional Sessions Judge in the referred Cr. Revision has taken note of the statement of independent witnesses recorded in paragraphs-11, 12 and 13 of the case-diary, who have not supported



the prosecution case.

The aforesaid argument cannot be considered at the stage of cognizance. The law is well settled that statement of interested witnesses cannot be brushed aside; rather their trustworthiness would be weighed at the stage of trial.

Learned Additional Sessions Judge in the Cr. Revision aforesaid has not considered the legal aspect of this matter though was conscious of the law that meticulous abbreviation of evidence is not permitted at this stage. Since the order of the learned 1st Additional Sessions Judge, Hilsa, is not under challenge before this Court, I am not going to interfere with that order with liberty to the informant or State to challenge the aforesaid order, if so advised.

So far claim of the appellants is concerned; I do not find any merit in their prayer in view of the material brought on the record during investigation of the case. Hence, this appeal is hereby dismissed as devoid of any merit.

(Birendra Kumar, J)

Mkr./-

AFR/NAFR	NAFR
CAV DATE	NA
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