

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No. 530 of 2018

Arising Out of P.S. Case No.-228 Year-2007 Thana- BAKHTIYARPUR District- Saharsa

Kusum Lal Yadav, Son of Late Chhote Lal Yadav, resident of Village- Turki,
P.S.- Bakhtiyarpur, District- Saharsa.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Damodar Yadav, Son of Kameshwar Yadav, resident of Village- Turki, P.S.-
Bakhtiyarpur, District- Saharsa.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Ashok Kumar Mishra and Mrs. Kalpana Kumari, Advocates
For the State	:	Mr. Anuj Kumar Srivastava, APP

**CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN
AMANULLAH**

ORAL JUDGMENT

Date : 05-09-2019

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

2. Despite valid service of notice, nobody appeared on
behalf of the opposite party no. 2 when the matter was taken up
and heard.

3. The petitioner has moved the Court under Sections
397 and 401 of the Code of Criminal Procedure, 1973 against the
judgment dated 16.03.2018 passed by the Sessions Judge, Saharsa
in Cr. Appeal No. 38 of 2016, by which the judgment and order of
conviction and sentence dated 16.09.2016 passed by the Judicial



Magistrate, 1st Class, Saharsa in GR No. 1418 of 2007/Tr. No. 1721 of 2016, has been upheld.

4. The allegation against the petitioner is of assault on the informant leading to serious injury.

5. Learned counsel for the petitioner submitted that the allegation of assault was against the petitioner and his wife but she has not been sent up and only the petitioner had faced trial. It was submitted that out of eight prosecution witnesses, only five have been examined who are all close family members of the informant. It was further submitted that even the Investigating Officer of the case has not been examined. Learned counsel submitted that the parties are related to each other and there was dispute with regard to grazing of buffaloes. It was submitted that even if some minor incident happened, it was on the spur of the moment without there being any intention and further that the petitioner has already gone over two and a half months of imprisonment. It was submitted that even the doctor has not been examined, who is said to have operated on the informant on the forearm, to prove that the injury was serious in nature. Learned counsel submitted that even if it is assumed that there were injuries, the petitioner is ready to compensate the informant monetarily.



6. Learned APP submitted that though the orders are well discussed based on the evidence of the witnesses, in view of the fact that the petitioner is an agnate of the informant and the dispute arose on the spur of the moment and the petitioner has already undergone imprisonment of few months, the Court may modify the sentence.

7. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the application stands disposed off without interfering in the order of conviction but modifying the sentence to period already undergone and fine of Rs. 30,000/- (Rupees thirty thousand), which shall be paid by the petitioner to the informant. The same be done within one month from today and receipt filed before the trial Court, failing which it shall be deemed that the present application has been dismissed and the original sentence awarded by the trial Court shall stand restored.

8. The Lower Court Records be returned forthwith.

(Ahsanuddin Amanullah, J.)

P. Kumar

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