

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.700 of 2018

Arising Out of PS. Case No.-122 Year-2003 Thana- KUMAR KHAND District- Madhepura

1. Narayan Yadav son of Bhubneshwari Yadav
2. Tej Narayan Yadav son of Bhubneshwari Yadav
3. Anil Yadav son of Yogendra Yadav

All resident of village - Jaduapatti, P.S. - Kumarkhand, District - Madhepura.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Bijay Kumar Sah son of late Prayag Sah resident of village Jaduapatti, P.S. - Kumarkhand, District Madhepura.

... .. Opp. Party/s

Appearance :

For the Petitioner/s	:	Mr. Bidhanesh Misra with Mrs. Tanuja Mishra, Advocates
For the State	:	Mr. Jharkhandi Upadhyay, APP

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

ORAL JUDGMENT

Date : 06-09-2019

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

2. The petitioners have moved the Court under Sections
397 and 401 of the Code of Criminal Procedure, 1973 against the
judgment dated 28.03.2018 passed in Criminal Appeal No. 43 of
2009 by the Additional Sessions Judge, FTC II, Madhepura by
which the judgment and order of conviction and sentence dated
10.09.2009 passed in Sessions Trial No. 74 of 2004 by the 1st



Assistant Sessions Judge, Madhepura relating to Kumarkhand PS Case No. 122 of 2003/G.R. Case No. 952 of 2003 has been upheld.

3. The allegation against the petitioners is that they under threat at gunpoint had got blank paper signed from the informant and also set fire to paddy and cotton fibre. Upon trial, they were convicted under Sections 386 and 436/34 of the Indian Penal Code and sentenced to three years rigorous imprisonment under Section 386 of the Indian Penal Code and 3 years under Section 436/34 of the Indian Penal Code and fine of Rs. 3,000/- and in default to undergo further rigorous imprisonment for three months. The same has been upheld in appeal.

4. Learned counsel for the petitioners submitted that no independent eye witness has been examined during trial and the witnesses are merely hearsay. It was further submitted that the witnesses are interested as there was some enmity between the parties. Learned counsel submitted that though a seizure list was prepared but no seized article has been produced before the Court during trial. Learned counsel submitted that even with regard to the statement of the witnesses, the same is purely circumstantial as they have only stated that they had seen the petitioners running away from the site with firearms. It was submitted that at 12:00 o'clock at night in the village, identification cannot be with



certainty and the statement that they had seen the petitioners in torch light is also not believable. Learned counsel submitted that during investigation it has come that there were other motives for the informant to falsely implicate the petitioners. Learned counsel submitted that the petitioners have already undergone imprisonment for more than three months.

5. Learned APP, from the Lower Court Records, submitted that the witnesses have clearly stated that the petitioners were running away from the place of occurrence and it is but natural that in villages people have torches at night because of uncertainty of electricity and witnesses identifying the petitioners who were running away from the site with firearms is a good circumstantial evidence to uphold their conviction. It was submitted that except for one witness, other witnesses have clearly stated that they have no enmity or dispute with the petitioners and, thus, their testimony cannot be discarded as motivated.

6. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties and going through the Lower Court Records and the judgments impugned, the Court does not find any occasion to interfere in the order of conviction, which is based on cogent material and sound



appreciation of the depositions by the Courts below. However, on the point of sentence, the Court is inclined to modify the same.

7. Accordingly, the application stands disposed off without interfering in the order of conviction but modifying the sentence to the period already undergone.

8. The Lower Court Records be returned forthwith.

(Ahsanuddin Amanullah, J)

Anjani/-

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