

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.118 of 2016

Arising Out of PS. Case No.-385 Year-2008 Thana- PATNA COMPLAINT CASE District-
Patna

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Kameshwar Bhagat S/O Late Mukhi Bhagat, resident of Jaitia, P.S. Gaurichak, Dist- Patna.

... .. Petitioner/s

Versus

1. State Of Bihar and Anr
2. Baleshwar Lal S/O Late Mukhi Bhagat, resident of Jaitia, P.S. Gaurichak, Dist- Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Tilak Sao

For the Respondent/s : Mr.Madan Kumarapp

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA
ORAL ORDER

4 22-04-2019 Heard the parites.

This revision application has been filed against the judgment dated 30.9.2015 passed in Cr. Appeal No.80/2012 by Sri Anand Behari Srivastava, 6th Addl. District and Sessions Judge, Patna City, by which the appeal filed by the O.P.no.2 was allowed by setting aside the judgment dated 03.05.2012 passed in Complaint Case No.385 of 2008 by Sri Ram Sujan Pandey, J.M. Ist Class, Patna City, convicting the accused under Section 443, 427 and 506/34 of the IPC and no substantial sentence has been passed, however, he has ordered for payment of the compensation of Rs.20,000/- and to execute a bond of Rs.10,000/- with two sureties of the like amount to keep peace



for the period of two years.

The aforesaid judgment and order has been assailed by the learned counsel for the petitioner on the ground that there are evidences available on the record in support of the conviction but without considering the same, the order passed by the learned trial court has been set aside .

Heard learned APP.

On perusal of the record, it appears that complaint case had been lodged against the O.P.no.2 and the other accused persons stating that they have destroyed the newly constructed '*Dalan*' covered with concrete shade and the O.P.no.2 fired from the Gun and entered into the ladies chamber of the house and abused and threatened them as well as took away the ornaments.

It appears that four witnesses have been examined on behalf of the prosecution, out of which P.Ws. 1 (complainant) is hearsay witness and he is not eye witness, P.W.2 did not turn up to be cross examined after charge, P.Ws. 3 and 4 happen to be wife and daughter-in-law of the complainant and considering the evidence of P.Ws. 3 and 4, the learned trial court has convicted the O.P.no.2, acquitting the other accused persons under Section 506/34 of the IPC and he directed the O.P.no.2 to



be released under Section 4 of Probation of Offenders Act on his entering into a bond of Rs.10,000/- with two sureties of the like amount and further to pay compensation and cost of Rs.20,000/- and only against the aforesaid judgment, O.P.no.2 preferred an appeal before the Sessions Judge bearing Criminal Appeal No.80 of 2012.

The learned appellate court considering the materials available on the record has come to the conclusion that the complainant has not produced any independent witness in support of his case and further P.W.1 is not eye witness of the case and there is land dispute between the parties, P.W.2 did not turn up after the charge for cross examination as such his evidence could not support the prosecution case, P.W.3 happens to be wife of the complainant and in her examination- in- chief she has narrated the story but during her cross examination, she has stated in para 4 that the occurrence took place outside the house and she has not stated that the '*Dalan*' is covered with '*Karkat*' and she was sleeping at the time of occurrence, as such she also does not appear to be eye witnesses of the occurrence and P.W.4 in her cross examination has supported the fact about the compromises of the case with Baleshwar Lal and Udit Paswan, she has got no objection about the said



compromise and she has further stated in para para 4 that the occurrence took place inside the house whereas P.W.3 has stated that the occurrence took place outside the house. In para 4 she has further stated that she reached at the spot after two hours when the occurrence took place.

All these facts clearly show that P.Ws. 3 and 4 are not eye witness of the occurrence. In view of the above fact, it appears that appeal was allowed due to absence of any cogent and reliable evidence.

Considering the above facts, I find that there is no illegality and error apparent on the record, as such the impugned judgment appears to be quite sustainable in the eye of law, as such in the result I find no merit in this revision application.

Accordingly, this revision application is dismissed.

(Vinod Kumar Sinha, J)

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