

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No. 818 of 2018

Arising Out of PS. Case No.-67 Year-2001 Thana- RAGHOPUR District- Supaul

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1. Bhaglu Yadav, Son of Bahadur Yadav.
 2. Bahadur Yadav Son of Late Ram Prasad Yadav.
 3. Bijendra Yadav Son of Bhabbi Yadav.
 4. Tilak Yadav Son of Late Rabbi Yadav.
 5. Bhabbi Yadav Son of Late Mahanth Yadav.
All resident of Village- Goripatti, P.S. Raghapur, District- Supaul.
 6. Umesh Yadav Son of Late Mueshwar Yadav, resident of Village- Dahipauri,
P.S. Raghapur, District Supaul.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Bansilal Yadav, Son of Late Surat Lal Yadav Village- Dahipawri, P.S.-
Raghapur, District- Supaul.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Ajay Kumar Thakur, Mr. Shashank Shekhar and Mr. Udbhav, Advocates
For the State	:	Mr. Jharkhandi Upadhyay, APP

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

ORAL JUDGMENT

Date : 18-10-2019

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

2. Though, notice was issued to the informant-opposite
party no. 2, which was validly served but nobody appeared when
the matter was taken up and heard.

3. The petitioners have moved the Court under Section
397 and 401 of the Code of Criminal Procedure, 1973 (hereinafter



referred to as the 'Code') against the judgment and order dated 28.05.2018, passed by the Sessions Judge, Supaul in Criminal Appeal No. 01 of 2010, by the which the judgment and order of conviction and sentence against the petitioners dated 11.02.2010 passed by the Sub Divisional Judicial Magistrate, Birpur in GR No. 318 of 2001/Trial Case No. 76 of 2001, has been disposed off by upholding the conviction but interfering in the sentence.

4. The trial Court had convicted the petitioners under Sections 341, 323, 324, 325, 447 and 427/34 of the Indian Penal Code and sentenced them to undergo simple imprisonment for one month under Section 341/34 of the Indian Penal Code; rigorous imprisonment for one year with fine of Rs. 5,000/- under Section 323/34 of the Indian Penal Code; rigorous imprisonment for two years with fine of Rs. 2,000/- under Section 323/34 of the Indian Penal Code; rigorous imprisonment for three years under Section 325/34 of the Indian Penal Code with fine of Rs. 2,000/-; rigorous imprisonment for one year under Section 427/34 of the Indian Penal Code and simple imprisonment for one month under Section 447/34 of the Indian Penal Code and in the event of non-deposit of fine, further two months simple imprisonment.

5. In the appeal filed by the petitioners, the conviction was upheld. However, the sentence was modified by giving



benefit to the petitioners under Section 4 of the Probation of Offenders Act, 1958 and directing them to execute bond within two months.

6. Learned counsel for the petitioners submitted that the case has been instituted on the basis of complaint filed by the opposite party no. 2 on 30.01.2001, whereas the date of occurrence is alleged to be 09.12.2000. It was submitted that there is no explanation for such delay. It was further submitted that the informant PW 2 has stated that he had come along with his son Binod Yadav whereas PW 1, who is also an eye witness has stated that the son Binod Yadav was already ploughing the field. Learned counsel submitted that it has come during investigation and also in the deposition of witnesses that there was land dispute with regard to the boundary as both the sides were claiming portion of the land to belong to them due to which the incident occurred. It was submitted that the petitioners have also filed a counter case for the same incident and, thus, it was the informant side who were aggressor on the land of the petitioners. Learned counsel submitted that the Investigating Officer has not been examined who could have given the clear picture of sequence of events or with regard to whose land it was. Learned counsel submitted that though the injury reports of the informant and his son are of the



date of occurrence i.e., 09.12.2000 and the same discloses that it was on the basis of requisition by the police, but no police case having been instituted, the version in the complaint case cannot be treated to be the first version and on that basis also, the prosecution case becomes weak. Learned counsel submitted that the son of the informant namely Binod Yadav, who was also injured has not been examined.

7. Learned APP, upon going through the records submitted that there is a reasonable and logical explanation to the delay in the informant moving the Court, inasmuch as, when on police requisition of the same day i.e., 09.12.2000, the Government doctor had examined the informant and his son and had found injuries, the onus was on the police authorities to institute formal proceeding and proceed and if the same has not been done, the same would not falsify or weaken the case of the informant against the petitioners. It was submitted that on the same day, when injuries, some of which are grave in nature, have been found on the person of the informant and his son, and the role of the petitioners in causing such injury has also been testified by the witnesses, the Court convicting them cannot be said to be bad either in law or on facts. It was further submitted that the contention that there is a counter case and dispute with regard to



the land, as to which side was the owner of the same, is not relevant for the purposes of consideration of the present case for the reason that even if the title of the land in question was in dispute, it will not give authority to any party to use force, either to occupy the same or to dispossess it from the possession of unauthorized persons as law contemplates a procedure for such eviction which is through the process of the Civil Court of competent jurisdiction. It was submitted that the issue of son of the informant ploughing the field, as per the statement of PW 1 and the statement of the informant that the son came along with him is of no relevance as the informant being the father has only said that the son had come to the place of occurrence along with him whereas, PW 2 had merely stated that the son was ploughing the field and, thus, there is no contradiction in the statement of the two witnesses. It was submitted that the reason given for the delay is also very logical as the informant has stated that he as well as his son were recuperating from their injuries in the hospital and were under the impression that the police was taking action in the matter as it was the police who had sent them for medical examination, but when they became aware that the police had not taken any action against the petitioners, who were accused, the informant was forced to move before the Court in a complaint



petition which was referred by the Court to the police for lodging FIR under Section 156 (3) of the Code. It was submitted that the Court has considered the deposition of the witnesses and has drawn inferences which are logical and has proved the fact that there was assault by the petitioners leading to injuries, some of which were grave in nature and, thus, rightly they have been convicted. It was further submitted that the appellate Court has concurred with the order of conviction of the trial Court and has been indulgent enough to give benefit of Section 4 of the Probation of Offenders Act, 1958 by directing the petitioners to execute bond without having either to undergo imprisonment or pay the fine.

8. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court does not find any merit in the present application. The discussions made in the judgment of the trial Court, in light of the materials on record before the Court, it is clear that the conviction is based on cogent reasons and deposition of witnesses which cannot be faulted. Moreover, as has rightly been submitted by learned APP, the appellate Court has also considered in detail the submissions of the petitioners and has negated them by upholding the order of



conviction and has in fact been indulgent by granting benefit of Section 4 of the Probation of Offenders Act, 1958.

9. In view thereof, the Court does not find any ground to interfere in the judgments impugned in its revisional jurisdiction.

10. Accordingly, the application stands dismissed.

11. The Lower Court Records be returned forthwith.

(Ahsanuddin Amanullah, J.)

P. Kumar

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