

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.2016 of 2021

Arising Out of PS. Case No.-134 Year-2015 Thana- BAHERI District- Darbhanga

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1. ASHOK SINGH Son of Late Ramswaroop Singh Resident of Village - Jorja, P.S. - Baheri, District - Darbhanga.
 2. Amar Anand @ Amar Kumar Singh Son of Late Madan Kumar Singh Resident of Village - Jorja, P.S. - Baheri, District - Darbhanga.

... .. Appellant/s

Versus

1. The State of Bihar
2. Rajendra Mochi Son of Anchal Amin P.O.- Baheri Block ,P.S.- Bahari Dist- Darbhanga

... .. Respondent/s

Appearance :

For the Appellant/s : Mr.Mrigendra Pratap Singh
For the Respondent/s : Mr.Binay Krishna

CORAM: HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA
ORAL JUDGMENT

Date : 08-12-2022

This appeal is directed against the order dated 26.09.2020 passed by 1st Additional Sessions Judge-cum-Special Judge, SC/ST (POA) Act, Darbhanga in SC/ST Case No. 159 of 2017 arising out of P.S. Case No. 134 of 2015, whereby and whereunder cognizance has been taken against the appellants for the offence under sections 341, 323, 504, 353, 379, 34 of the Indian Penal Code and section 3(i)(x) of the SC/ST (POA) Act.

2. The facts of the case, in short, is that the informant being an Anchal Amin was on additional charge of Baheri Block for 3 days in a week. On 24.06.2015 he had gone for measurement of the land of Middle School Jorja. In the



pressure of the Principal of the said school as also one Avinash Kumar Singh, the accused persons namely Mithilesh Singh, Ashok Singh, Amar Kumar Singh, Monu Singh and others pressed his neck with intention to kill and abused him by his caste name. They also assault on his eye, neck and head.

3. The order taking cognizance has been challenged mainly on the following grounds :

(a) Plea of Alibi : On the date of occurrence, the appellant no. 1 was on duty at post office (Post Master of Jorja P.O.) and the appellant no. 2 is at Patna who is an employee of Govt. of Polytechnic College, Patna.

(b) The police after investigation, submitted final form, but the Magistrate differing with the same took cognizance of the offence.

(c) The order of cognizance is hit by section 468 of the Code of Criminal Procedure.

4. Learned Spl. P.P. appearing for the State opposes the appeal on basis of the following grounds :

(a) That the plea of Alibi is required to be proved during trial.

(b) The Magistrate has the power to differ with the police report and take cognizance of the offence. The Magistrate



has discussed all the grounds on basis of which he has taken cognizance of the offence.

(c) Since the maximum punishment under the Special Act is 5 years, the advantage of section 468 Cr.P.C. is not available in the present case.

5. This Court agrees with the submissions advanced by learned Spl. P.P. for the State. There is no error in the order under challenge. Accordingly, the appeal is dismissed at the stage of admission itself.

(Arvind Srivastava, J)

mcv/-

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