

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.809 of 2017

Arising Out of PS. Case No.-63 Year-2012 Thana- GUTHANI District- Siwan

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Chandan Kishor @ Chandan Kumar Kushwaha @ Chandan Kumar Son of
Panchdeo Bhagat, Resident of Village -Mian Gundi, Police Station- Guthani,
District-Siwan.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Laxmina Devi, Wife of Late Om Prakash Bhagat, Resident of Village -Mian Gundi, Police Station-Guthani, District- Siwan.
3. Shambhu Mahto @ Shambhu Bhagat, Son of Late Brij Kishore Bhagat Resident of Village -Sahpur, Police Station-Nautan, District- Siwan.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Raghav Prasad, Advocate

For the Respondent/s : Mr. Sri Vinod Shankar Modi, APP

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CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN
ORAL JUDGMENT

Date : 21-04-2023

I.A. No. 1697 of 2017

Learned counsel for the petitioner submits that present I.A. No. 1697 of 2017 has been filed for condoning the delay of 162 days in the filing the present criminal revision application.

On the grounds mentioned in the petition for delay, let the delay in filing the present criminal revision application is hereby condoned and the I.A. No. 1697 of 2017 is allowed.

Learned counsel for the petitioner and learned counsel for the State are present.

The present criminal revision petition has been filed against the judgment and order dated 11.11.2016 passed by Additional Sessions Judge-II, Siwan in Criminal Appeal No. 15 of 2015 arising out of Guthani P.S. Case No. 63 of 2012 in which Lower Court has convicted the opposite party no.3 for 7 years which was reduced by the Appellate Court to 4 years 2 months under Section 307/34 of the Indian Penal Code and affirm the conviction and sentence as passed by the Trial Court vide judgment and order dated 28.04.2015 and 30.04.2015 by Assistant Sessions Judge-I, Siwan in S. Tr. No. 150 of 2013.

Counsel for the petitioner fairly submits that he is not challenging the judgment on the point of illegality, correctness and propriety. He is only challenging that once material has come against the present opposite party no.3 that by virtue of his action, 13 injuries were found by the doctor in that case the decrease of sentence is not proper.

Learned counsel for the State submits that due to involvement of the O.P. No.3, the conviction was sustained but from the evidence of eye-witnesses, it has come that there were series of persons who have attacked and caused multiple injuries on the body of the victim.

From perusal of the Trial Court order, it is true that

there were 13 injuries caused on the body of the victim but upon analysis of the identification of the accused persons, it is not the opposite party no.3 only, rather name of other accused persons have been stated by P.W.2 and P.W.3 who are alleged to be the eye-witness and in this view of the matter that injuries was not caused solely by the opposite party no.3. The Appellate Court has rightly reached on the conclusion and minimize the sentence.

Counsel for the petitioner has also raised about involvement of O.P. No.2 in this case and it has come in the evidence that she caught hold the victim and other persons have inflicted injuries. It is due to this reason, counsel for the petitioner submits that under Section 34 of the Indian Penal Code his involvement is there and her acquittal is not correct and bad in law.

In theory, it is true that O.P. No.2 has caught the accused but it is no where came in the evidence that she has caught the victim in furtherance of common intention, this material has not come and since furtherance of common intention is lacking in this case, therefore, Section 34 of the Indian Penal Code shall not apply and there is no allegation upon the O.P. No.2 that she has inflicted injuries.

In this view of the matter, this court feel that there is neither illegality nor propriety or need correction in the judgment and order dated 11.11.2016 passed by Additional Sessions Judge-II, Siwan in Criminal Appeal No. 15 of 2015 and judgment and order dated 11.11.2016 has been affirmed.

Therefore, the present Criminal Revision application is hereby dismissed.

(Dr. Anshuman, J.)

ravishankar/-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	