

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.718 of 2023

Arising Out of PS. Case No.-63 Year-2017 Thana- SAHAR District- Bhojpur

Chandradeo Rai Son of Late Narayan Rai Resident of village - Vansidihri,
P.S. - Sahar, Distt. - Bhojpur

... .. Appellant/s

Versus

1. The State of Bihar
2. Shiv Gopal Pande Son of Raj Kishor Pande Resident of village - Vansidihri,
P.S. - Sahar, Distt. - Bhojpur
3. Siyamani Kuar @ Siyamuni Kuar Wife of Late Ramanuj Rai Resident of
village - Vansidihri, P.S. - Sahar, Distt. - Bhojpur
4. Usha Devi @ Usha Kumari @ Ushamani Kumari Wife of Shiv Gopal Pande
Resident of village - Vansidihri, P.S. - Sahar, Distt. - Bhojpur

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Nagendra Sharma, Advocate.

For the Respondent/s : Mr. Manish Kumar No2, APP.

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

and

HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 25-09-2023

We have heard Mr. Nagendra Sharma, learned counsel for the appellant/informant, who has assailed the judgment of the Trial court in Sessions Trial No. 81 of 2018, arising out of Sahar P.S. Case No.63 of 2017, GR No.3043 of 2017, whereby the respondents have been convicted only under Section 323/34 of the IPC and have been given the benefit under the Probation of Offenders Act, 1958. The



judgment of conviction and order of sentence is dated 22.05.2023.

2. It has been submitted on behalf of the appellant/informant that notwithstanding the clear testimony of five witnesses on his behalf, the Trial court has wrongly convicted the respondents only for the offence under Section 323/34 of the IPC. On top of it, the Trial court has completely misdirected himself in giving the benefit under the Probation of Offenders Act, 1958 to the respondents.

3. We had called for the Trial court records by order dated 18.08.2023, which has now been received.

4. From the perusal of the records as also the judgment of the Trial court, it appears that though five of the witnesses have talked about the respondents having assaulted the members of the prosecution party but what comes out clearly from their deposition is that there is a dispute of property between the informant/appellant and respondent Siyamani Kuar @ Siyamuni Kuar, who is the widow of the own brother of the informant/appellant.



5. According to the prosecution case, the dispute began with respect to apportionment of 14 kathas of land, which apparently was distributed half and half between Siyamani Kuar @ Siyamuni Kuar and Chandradeo Rai.

6. According to the accusation of the appellant/informant, the respondent/Siyamani Kuar @ Siyamuni Kuar has appropriated more land than her share.

7. The dispute began when an objection was raised by the appellant/informant. The two other respondents are the persons who came forward in support of Siyamani Kuar @ Siyamuni Kuar and assaulted the members of the prosecution party.

8. It appears from the records that no injury report was brought on record nor the doctor who treated the injured has been examined. The I.O. of this case also has not been examined. The defence witness has spoken about the land dispute between the respondent/Siyamani Kuar @ Siyamuni Kuar and the informant/appellant.

9. Believing the statement of the witnesses to be true, so far as the assault was concerned, the respondents



were convicted under Section 323 with the aid of 34 of the IPC.

10. We find that the Trial court, considering the entire background of the case, especially taking into account that one of the respondents is directly related to the informant, whereas two others are agnates who allegedly came in support of respondent/Siyamani Kuar @ Siyamuni Kuar, gave the benefit to the respondents under the Probation of Offenders Act, 1958 and allowed the respondents go with a warning. They have also been asked to execute a bond.

11. No reason has been shown to us for any interference with the aforementioned judgment of the Trial court.

12. Accordingly, the appeal is dismissed.

(Ashutosh Kumar, J)

(Alok Kumar Pandey, J)

manoj/krishna

AFR/NAFR	NAFR
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