

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.3140 of 2022

Arising Out of PS. Case No.-192 Year-2005 Thana- DUMRAO District- Buxar

1. Dadan Singh Yadav @ Dadan Pahalwan @ Dadan Yadav S/O Late Lal Chand Yadav Resident of Samhar, P.S.- Dumrao, District- Buxar
2. Subodh Kumar S/O Late Madhusudan Rai Resident of Village- Punaichak, P.S.- Shastrinagar, District- Patna. P.A. of Dadan Pahalwan
3. Madan Singh S/O Late Lalchand Yadav Resident of village- Samhar, P.S.- Dumraon, District- Buxar.
4. Ram Bachan Yadav S/O Bhikhari Yadav Resident of Daxintola, Dumraon, P.S.- Dumraon, District- Buxar.
5. Kushi Chandra Singh @ Khushi Chand Koiri S/O Lalan Koiri Resident of Charmotiya, Inar Road Dumraon, P.S.- Dumraon, District- Buxar.
6. Laxman Turha S/O Shiv Poojan Turha Resident of Village- Jangal Bazar Road, P.S.- Dumraon, District- Buxar.
7. Bhuar Yadav S/O Late Baban Yadav Resident of Village- Samhar, P.S.- Dumraon, District- Buxar
8. Manoj Yadav S/O Sri Gandhi Yadav Resident of Village- Samhar, P.S.- Dumraon, District- Buxar
9. Bhim Yadav S/O Rampoojan Yadav Resident of Village- Daxin Tola, Dumraon, P.S.- Dumraon, District- Buxar.
10. Akhtar Hussain S/O Md. Yasin Resident of Nathuni ke Bagh, Dumraon, P.S.- Dumraon District- Buxar.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Dhananjay Kumar, Advocate
	:	Mr. Abhinav Pandey, Advocate
For the Respondent/s	:	Mr. Zeyaul Hoda, APP

CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT
Date : 06-12-2023



Heard learned counsel appearing on behalf of the appellants and learned APP appearing on behalf of the State.

2. The present appeal has been filed by the appellants/convicts under Section 374(2) of the Code of Criminal Procedure (hereinafter referred to as 'the Code') challenging the impugned judgment of conviction and order of sentence dated 30.08.2022, passed by learned Additional Sessions Judge-III (M.P./M.L.A.) Buxar in Sessions Trial No. 17 of 2008 (C.I.S. No. 1754 of 2013) arising out of Dumroan P.S. Case No. 192 of 2005 whereby the concerned Trial Court has convicted the appellants under Section 147 and 148 of the Indian Penal Code (for short 'IPC') and sentenced them to undergo rigorous imprisonment for one year and fine of Rs. 5,000/- and in default of payment of fine further undergo rigorous imprisonment of one month for the offence punishable under Section 147 of the IPC and rigorous imprisonment for two years and fine of Rs. 5,000/- and in default of payment of fine further undergo rigorous imprisonment of one month for the offence punishable under Section 148 of the IPC. Both the sentences shall run concurrently.

3. The appellants/convicts were acquitted for the offence punishable under Sections 307, 379 on the ground of



merits, whereas acquitted for the offences punishable under Sections 325, 323, 341, 342, 504 read with Section 149 of the IPC, on the ground of compromise under the leave of learned Trial Court.

4. The brief facts of the prosecution case as it springs from the first information report (F.I.R) of the informant, namely Ramjee Singh Yadav S/o Late Kailash Singh Yadav, who examined before the learned Trial Court as P.W. 5, it appears that he was residing at Dumraon in a rented accommodation alongwith his family and was District Vice-Chairman of RJD (*Rashtriya Janata Dal*) Party. In the election of State Legislature for the year of 2005, he was canvassing for one Sunil Singh @ Pappu Yadav, who was candidate of his party and openly opposed the appellant/convict no. 1, namely, Dadan Pahalwan, which caused to develop political enmities between the parties. On 25.10.2005 at about 8:30 AM, when informant/P.W.-5 alongwith his nephew Ramashankar Yadav and colleague Sunil Kumar Yadav, were in the temporary office of the party at Kalawati Complex, situated at Station Road, Dumraon, appellants/convicts, Dadan Singh Yadav @ Dadan Pahalwan came alongwith Madan Singh Yadav, Manoj Yadav, Subodh Yadav (PA of Dadan Yadav), Bhuwar Yadav, Ram



Bachan Yadav, Ramashankar Yadav, Bhim Yadav, Laxman Singh Yadav and Laxman Turha alongwith 25-30 other unknown persons equipped with arms and sticks mob arrived under the leadership of the Dadan Pahalwan. It is narrated further thereof that Dadan Pahalwan started to abuse the informant, as how he dare to oppose him and now he will teach him a lesson, soon thereafter they surrounded him and started beating mercilessly with stick, butt of rifle, with fist and legs due to which informant became unconscious. They dragged informant/P.W.-5 upto road and dropped him there thinking dead. They also threatened the nearby people as to face the same consequences, if they will oppose him. After the occurrence when appellants/convicts were in process to leave the place of occurrence, Madan Yadav, took out Rs. 2,200/- and a telephone diary and Manoj Yadav snatched gold ring worth Rs. 2,500/- from the informant/P.W.-5. It is further stated that assault was made with an intention to kill out of election enmities. They also threatened to kidnap and kill the family members of the informant/P.W. 5.

5. On the basis of aforesaid written information Dumraon P.S. Case No. 192 of 2005 was registered on 25.10.2005, where after investigation charge-sheet no. 177 of



2005 dated 19.12.2005 was submitted arraying Dadan Singh Yadav @ Dadan Pahalwan alongwith Madan Singh Yadav, Manoj Yadav, Subodh Yadav (PA of Dadan Yadav), Bhuwar Yadav, Ram Bachan Yadav, Ramashankar Yadav, Bhim Yadav, Laxman Singh Yadav and Laxman Turha as accused persons for the offences punishable under Sections 147, 148, 149, 341, 323, 342, 307, 379, 504 and 506 of the IPC. A separate charge-sheet no. 25 of 2007 dated 31.01.2007 was also filed against the accused Ramashankar Yadav, Akhtar Ansari and Khushi Chand Singh for the aforesaid offences.

6. After trial, through impugned judgment appellants/convicts were acquitted for the offence punishable under Sections 307/149 and 379 of the IPC. It transpires that during the course of argument before the learned Trial Court a compromise petition was filed suggesting thereof that good relation have been restored between the parties and they are desirous to maintain good relationship in future also and on the basis of said compromise the Trial Court acquitted the appellants/convicts from the rest of the charges, except 147 & 148 of the IPC.

7. Learned counsel for the appellants/convicts submitted that learned Trial Court convicted appellants/convicts



under Section 147 & 148 of the IPC only for the reason, despite of the compromise that these two offences are not compoundable in nature. It is pointed out that appellants/convicts acquitted for the charges of substantial offence therefore the conviction under Sections 147 & 148 of the IPC, appears bad in eyes of law on its face. In support of his submissions learned counsel relied upon the report of this High Court in the case of **Ramphal Gope and Others v. State of Bihar** reported as **1964 (2) CRI LJ 111**.

8. Learned counsel further submitted from the depositions of informant/P.W. 5, which appears contradictory on the point of election. It is submitted that he did not place any document in support of his statement that he was running a party office at Kalawati Complex, Dumraon. Learned counsel further emphasized that the owner of the Kalawati Complex, where alleged occurrence took place examined as D.W. 1, who specifically deposed that no occurrence took place in the premises of the said complex on the alleged date and time. It is also pointed out that I.O. of this case could not be examined and on this score alone it cannot be said that prosecution established its case beyond all the reasonable doubts. It is further submitted that no independent witnesses were examined and those



witnesses, who were examined appears as interested witnesses out of political enmities. It is also submitted by learned counsel that even the statement of doctor suggests that he did not find any mark of injury on the chest of injured and he referred injured to PMCH under pressure as no room was left. It is submitted that as I.O. was not examined in this case, he could not draw his contradictions on record as to impeach the credibility of different prosecution witnesses and as such one of the important right available under law as to defend was not availed during the trial by appellants/convicts. While concluding the argument it is submitted that accused persons in the present case were examined under Section 313 of Cr.P.C. on 06.06.2022 after closure of defence evidence, which appears in violation of Section 313 (1)(b) of the Cr.P.C., which suggest that same be done before accused called the defence witnesses. It is also submitted that there was no common object for unlawful assembly as someone was alleged to cause injury, where other co-accused/co-convict were alleged to be involved in theft, which was disbelieved by the Trial Court. It is further pointed out that no overt act of any other accused persons surfaced during the course of trial except Dadan Singh Yadav @ Dadan Pahalwan and Manoj Yadav and as such assembly as unlawful



cannot be gathered safely. While concluding the argument learned counsel relied upon the Para 17 of the legal report of this Hon'ble High Court as reported in the matter of **Cr. App (DB) No. 69 of 1995** reported as **2022 (1) PLJR 432** for better understanding of the case, which is as under:-

17. Having said so, we must hasten to add that the court is required to determine the issue in every case before it as to 'whether the offence was committed by any member of the unlawful assembly in prosecution of the common object or whether an offence was such as the members of that assembly knew to be likely to be committed.' The accused should not, merely by reason of his association with other members of an unlawful assembly be held vicariously liable for each and every offence committed by his associates, which he himself neither intended nor knew to be likely to be committed. Members of an unlawful assembly may have community of object only upto a certain point. Beyond that point they may differ in their objects. In such fact situation, the knowledge possessed by each member as to what offence is likely to be committed in prosecution of their common object shall also vary. Whether a member of an unlawful assembly was aware as regards likelihood of commission of another offence or not would depend upon facts and circumstances of each case such as background of the incident, the motive, the nature of the assembly, the nature of the arms carried by the members of the assembly, their common object and behaviour of the members soon before, at and after commission of the crime etc. A



mere possibility of the commission of the offence would not necessarily enable the court to draw an inference that the likelihood of commission of such offence was within the knowledge of every member of an unlawful assembly. Mere presence in an unlawful assembly cannot render a person liable unless there was a common object and the accused was actuated by that common object. The word object means the purpose or design. In order to make it common it must be shared by all. It does not require a prior concert and common meeting of minds before the attack.

9. It would be apposite at this stage to reproduce Para 3 of the legal report of this Hon'ble High Court as reported in the matter of **Ramphal Gope and Others v. State of Bihar** (supra) for better understanding of the case, which is as under:-

3. Mr. Baidya Nath Prasad appearing for the petitioners has pointed out to me that before theft-trial Court there was a compromise petition filed and the trial Court accepted the compromise so far as the offence under Section 333 Indian Penal Code was concerned. Now that the appellate Court has found these petitioners guilty under 323 and 323/34, Indian Penal Code, in my opinion, the compromise petition can be put into effect even at this stage. There now remains the charge under Section 147 Indian Penal Code which is not compoundable. But it appears that the common object of the unlawful assembly was to assault. If the charges under Sections 323 and 323/34 Indian Penal Code fail on account of the compromise,



it is obvious that the charge under Section 147 Indian Penal Code must also fail because the common object was to assault. For this reason I am satisfied that the petitioners must be acquitted of all the charges framed against them. The application is accordingly allowed, and the order of conviction and sentence passed on the petitioners is set aside.

10. Learned APP appearing on behalf of State, while opposing the appeal submitted that conviction of appellants/convicts is correct in eyes of law, in view of the legal provisions as offence punishable under Sections 147 and 148 of the IPC, are not appearing compoundable. Hence, the only issue is to decide in this case is whether conviction under Sections 147 & 148 are correct or bad in eyes of law, as object of assault was failed to be established before learned Trial Court.

11. It would be appropriate to reproduce Sections 146, 147 and 148 of the IPC for better understanding of the case, which is as under:-

*146. **Rioting.**—Whenever force or violence is used by an unlawful assembly, or by any member thereof, in prosecution of the common object of such assembly, every member of such assembly is guilty of the offence of*



rioting.

147. Punishment for rioting.- *Whoever is guilty of rioting, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.*

148. Rioting, armed with deadly weapon.- *Whoever is guilty of rioting, being armed with a deadly weapon or with anything which, used as a weapon of offence, is likely to cause death, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.*

12. It is admitted position and out of testimony of injured witnesses i.e., P.W.-5/informant of this case that occurrence took place out of political enmities, which assigned as motive of the present occurrence. The learned Trial Court disbelieved the version for the offence punishable under Sections 307 and 379 of the IPC. Though for the rest of the charges appellants/convicts have been convicted by the Trial Court but they have been acquitted on the ground of compromise except for the offence punishable under Sections



147 & 148 of the IPC as it appears non-compoundable. Appellants/convicts were denied to give even benefit of probation, as available under Probation of Offenders Act, 1958 as matter arises out of election dispute.

13. In view of the aforesaid discussions, it appears that charges under Section 307, 379, 325, 323, 341, 342, 504 read with Section 149 fails either on merit or on account of compromise, it is obvious that charges under Section 147 and 148 of the IPC must also fail because the “common object” was to assault, which was disbelieved by the learned Trial Court. Accordingly, this Court is satisfied that appellants/convicts must be acquitted of all the charges framed against them.

14. Accordingly, the appeal stands allowed.

15. The impugned judgment of conviction and order of sentence dated 30.08.2022 passed by learned Additional Sessions Judge-III (M.P./M.L.A.) Buxar in Sessions Trial No. 17 of 2008 (C.I.S. No. 1754 of 2013) arising out of Dumroan P.S. Case No. 192 of 2005 is quashed and set aside.

16. The appellants, above-named, are therefore acquitted of the charges levelled against them. Since the appellants are on bail, they have been discharged from the liabilities of their bail bonds. Sureties are also stands discharged



from their respective liabilities.

17. Office is directed to send back the lower court records along with a copy of the judgment to the court below.

(Chandra Shekhar Jha, J.)

S.Tripathi/-

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CAV DATE	
Uploading Date	
Transmission Date	

