

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.50 of 2019

Arising Out of PS. Case No.-134 Year-2001 Thana- TRIVENIGANJ District- Supaul

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1. Agamlal Yadav, S/o Late Dashrath Yadav
 2. Pramod Yadav S/o Agamlal Yadav
 3. Pritam Yadav S/o Buchan Yadav All residents of village- Malhanwa, P.s. Triveniganj, District- Supaul.

... .. Petitioner/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Gopal Kumar Jha

For the Respondent/s : Mr. Sanjay Kumar Sharma

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
ORAL JUDGMENT

Date : 23-02-2024

1. The petitioners are the convict in G.R. Case No. 814 of 2001 under the charge of Sections 147/148/341/323/324/504 of the Indian Penal Code. The convicts were sentenced to imprisonment on different counts with fine. For non-payment of fine, they were directed to suffer further period of imprisonment. The order of conviction and sentence was passed by the learned Judicial Magistrate, 1st Class, Supaul (Saharsa) on 20th of February,



2014. The convicts preferred an appeal before the learned Additional Sessions Judge, 2nd Court, Supaul, being Cr. Appeal No. 04 of 2014. By a judgement, dated 24th of September, 2018, the order of conviction and sentence, passed by the learned Judicial Magistrate, 1st Class, Supaul in G.R. Case No. 814 of 2001, was confirmed and, accordingly, the appeal was dismissed.

2. Being aggrieved by the decision of the Appellate Court, the petitioners have preferred the instant revision.

3. It is submitted by the learned Advocate for the petitioners that as per the written complaint submitted by the informant in the local police station, the prosecution case is that on 20th of November, 2001 at about 01.00 P.M., a goat of accused, Agamlal Yadav and Sagamlal Yadav entered into the land of the informant, where he had sown paddy crops. Seeing the goat eating paddy crops, the daughter of the informant rushed to their land and caught hold of the said goat. When she was bringing the said goat to their house, the wives of Agamlal Yadav and Sagamlal Yadav came there, abused and assaulted her and tried to take away the goat. Seeing this, the informant went to help his daughter and by being the accused persons, namely, Sagamlal Yadav, Agamlal



Yadav, Shivchandra Yadav, Shailen Yadav, Dhanjeet Yadav and Preetam Yadav appeared at the spot being armed with Lathi, Bhala, Farsa etc. and assaulted the informant with the help of Lathi on his head, causing bleeding injury. The informant fell down. Then, all the accused persons assaulted him with the help of Lathi on his back and leg. His daughter, Manju Devi tried to save him but the accused persons also assaulted her causing injury. Hearing their hue and cry, local people assembled at the spot. Then the accused persons left them. While leaving, accused Agamlal Yadav and Sagamlal Yadav snatched away a silver chain from the possession of the daughter of the informant.

4. The incident took place on 20th of November, 2001 at about 01.00 P.M. The informant made statement before the police after lapse of two days on 22nd of November, 2001. On the basis of the said statement, police registered a case against the petitioners under Sections 147/148/341/323/324/504 of the Indian Penal Code and on completion of investigation submitted charge-sheet against the accused persons. The learned Magistrate took cognizance of offence against the accused persons. Subsequently, charge



was framed against them as the accused persons pleaded not guilty, trial of the case commenced.

5. It is contended on behalf of the petitioners that during trial, prosecution examined five witnesses. Amongst them, P.Ws. 1, 2 and 4 are local villagers. They did not support the prosecution case and they turned hostile. P.W. 3 is the informant and father of the victim. P.W. 5 is the victim herself.

6. It is pointed out by the learned Advocate for the petitioners that no independent witnesses supported the prosecution case. Secondly, the informant and the victim are naturally interested witnesses and their evidences were not considered by the Trial Court with reasonable circumspection. There was no explanation of delay in lodging the F.I.R. The prosecution failed to prove injuries received by the informant and his daughter in the said incident, because of the fact that the Medical Officer who allegedly treated the informant and his daughter was not examined during the trial.

7. Only on the basis of the evidence of P.Ws. 3 and 5, the accused persons were held guilty for committing offences under Sections 147, 148, 341 and 323 of the Indian Penal Code.



8. According to the learned Advocate for the petitioners, the impugned judgement passed by the Appellate Court, confirming the judgement of the Trial Court, did not consider the case of the Appellant that there was no occasion to form any unlawful assembly by the accused persons and thereafter with the common object of such unlawful assembly, no act was committed within the meaning of “rioting”, being the penal provision under Sections 147 and 148 of the IPC.

9. Having heard the learned Advocate for the petitioners and on perusal of the materials on record, this Court likes to point out that in order to prove the charge under Section 147 of the Indian Penal Code, the prosecution is required to prove: -

(I) that five or more persons were assembled;

(ii) that such assembly was unlawful when it was confined or subsequently became unlawful having anyone of the five objects specified in Section 141;

(iii) that such object was the common object of those composing such assembly;

(iv) that the accused or any member of such unlawful assembly used force or violence; and



(v) that such force and violence are used in prosecution of such common object.

10. Now an assembly of five or more persons is designated as unlawful assembly, if the common object of the persons composing that assembly is:

(i) to overawe by criminal force, or show of criminal force, the Central or any State Government or Parliament or the Legislature of any State or any Public Servant in the exercise of the lawful power of such Public Servant; or

(ii) to resist the execution of any law, or of any legal process; or

(iii) to commit any mischief or criminal trespass, or other offence; or

(iv) by means of criminal force, or show of criminal force, to any person to take or obtain possession of any property, or to deprive any person of the enjoyment of a right of way, or of the use of water or other incorporeal right of which he is in possession or enjoyment, or to enforce any right or supposed right; or



(v) by means of criminal force, or show of criminal force, to compel any person to do what he is not legally bound to do, or to omit to do what he is legally entitled to do.

11. In the instant case, if we scan the evidences closely for the limited purpose as to whether both the Courts below have been able to appreciate the evidence properly or the finding of the Court below was perverse, it would appear that on 20th of November, 2001 at about 01.00 P.M., the daughter of the informant saw a goat belonging to the accused persons was grazing in the paddy field of the informant. She went there and caught hold of the goat. Seeing that, the wives of Agamlal Yadav and Sagamlal Yadav came to the daughter of the informant and assaulted her by fists and slaps. The said wives of Agamlal Yadav and Sagamlal Yadav were not made accused in the case. Subsequently, the accused, Sagamlal Yadav, Agamlal Yadav, Shivchandra Yadav, Shailen Yadav, Dhanjeet Yadav and Preetam Yadav came to the spot, armed with Lathi, Bhala and Farsa and Agamlal Yadav assaulted the informant with Lathi on his head and also lifted Farsa. He fell down and became unconscious. Therefore, P.W. 3 stated about the role of Agamlal Yadav in assaulting him. It is ascertained from his evidence that he became unconscious on



being assaulted by Agamlal Yadav. Therefore, it is not possible to see as to whether other accused persons committed any offence at all or not. It is also not possible for him to state whether other accused persons assaulted his daughter or not because he was unconscious at that point of time. There is absolutely no evidence that the petitioners had common object to commit the offence of causing hurt to the informant.

12. It is needless to say that the mere fact that a person was present in assembly when the offence of rioting was committed, is not sufficient to show that he was a member of the unlawful assembly which committed the offence. To constitute an unlawful assembly, the common object of the assembly must be a an immediate one or to be carried into effect forthwith. However, it is the duty of the prosecution to prove common object of the accused persons.

13. In the instant case, the evidence on record is absolutely silent with regard to common object of the assembly.

14. It is true that in order to bring home a charge under Section 323 of the Indian Penal Code, medical evidence is not necessary. However, when the injured person



is medically treated after being assaulted, non-examination of the Medical Officer and failure to produce the treatment-sheet in Court carries an adverse presumption against the prosecution. Both the Courts below failed to consider the above-mentioned aspect. It is also not considered as to why there was delay of two days in lodging the F.I.R. against the petitioners. Unexplained delay in lodging the F.I.R. vitiates the criminal case. Both the Courts below failed to appreciate such aspect involved in criminal trial of G.R. Case No. 814 of 2001 and Cr. Appeal No. 04 of 2014.

15. In view of the above discussion, I have no other alternative but to hold that the prosecution failed to bring home the charge against the petitioners beyond all shadows of reasonable doubt. The accused persons/petitioners, therefore, are entitled to be acquitted.

16. For the reasons stated above, the instant revision is allowed on contest.

17. The judgement and order of conviction, passed in G.R. No. 814 of 2001 and affirmed in Cr. Appeal No. 04 of 2014 are quashed and set aside.

18. The accused persons be released from their bail-bonds forthwith.



19. Let a copy of this judgement be sent to the
Court below for information and necessary action.

(Bibek Chaudhuri, J)

skm/-

AFR/NAFR	N.A.F.R.
CAV DATE	
Uploading Date	26.02.2024
Transmission Date	

