

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.527 of 2018

Arising Out of PS. Case No.-108 Year-2004 Thana- HUSSAINGANJ District- Siwan

1. Madan Yadav Son of Late Sheopujan Yadav.
2. Laxman Yadav, Son of Late Shiv Balak Yadav.
Both resident of Village- Ghishnapur, P.O. Hussainganj, P.S. Hussainganj,
District- Siwan.

... .. Petitioner/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Ajay Kumar Pandey, Advocate
For the Respondent/s : Dr. Indihar Kumari, APP

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
ORAL ORDER

7 09-02-2024 Heard learned advocate for the petitioners and learned
Additional Public Prosecutor for the State.

2. The instant revision is directed against an order dated 29.01.2018 passed by the learned Additional Session Judge-V, Siwan in Criminal Appeal No.03 of 2010 filed by the petitioners against the judgment and order of conviction of sentence dated 23.12.2009 passed by learned Judicial Magistrate, 1st Class, Siwan in Trial No.103 of 2009 arising out of Hussainganj P.S. Case No. 108 of 2004. The Trial Court convicted the petitioners under Sections 341, 323, 324, 307, 379, 504/34 of the Indian Penal Code. Subsequently, in appeal the order of sentence against petitioner no.1 under Section 379



of I.P.C. was set aside and conviction and sentence against both the petitioners under Sections 341, 323, 324/34 of the I.P.C. was affirmed. The petitioners have challenged the order of the Court of appeal as mentioned above in the instant revision.

3. For effective adjudication of the instant revision, prosecution case as disclosed from the written complaint submitted by one Sunil Kumar Yadav on 24.09.2024 is required to be stated in brief. It is alleged by the informant that on 24.09.2004 at about 08 p.m. the informant and his cousin brother Ranjeet Kumar Yadav were studying sitting in the courtyard in front of their house. At that point of time, petitioner no.1-Madan Yadav called Ranjeet from outside, Ranjeet went to Madan and found Laxman Yadav, petitioner no.2 and Birendra Yadav along with the said Madan Yadav. Laxman Yadav directed Birendra Yadav to assault Ranjeet Kumar Yadav, immediately Madan Yadav caught hold of the right hand of Ranjeet Kumar Yadav and Birendra Yadav assaulted him on the left side of his palm with the help of a knife. He also took away a sum of Rs.1250/- from the pocket of Ranjeet. Petitioner No.1 Madan Yadav snatched away a gold chain from his neck, hearing the hue and cry the informant rushed to the spot to save Ranjeet Kumar Yadav but Birendra Yadav assaulted him with



the knife on his right hand, as a result of which he received cut injury on his finger. The informant also stated that the accused persons were angry seeing the informant and his brother pursuing their studies. On the basis of the said complaint police registered a case under Section 341, 323, 324, 379, 504/34 of the Indian Penal Code. On completion of investigation charge sheet was filed against the petitioners and above mentioned Birendra Yadav under the aforesaid penal provisions. The Trial Court framed charge against the accused persons, namely, the petitioners along with Birendra Yadav under Section 341, 323, 324, 504/34 of the Indian Penal Code. Accused Madan Yadav was separately charged for committing offence under Section 379 of the I.P.C.

4. I have already stated that the Court of Appeal by passing the impugned judgment affirmed the conviction under Section 341, 323, 324 of the I.P.C. against the petitioners. Accused Madan Yadav was acquitted of the charge under Section 379 of the I.P.C.

5. Learned advocate for the petitioners submits that from the F.I.R. it is clear that one Birendra Yadav assaulted Ranjeet and the informant on the date and time of occurrence as per the prosecution case, therefore, both the courts below



committed an error in recording an order of conviction and sentence against Madan Yadav and Lakhan Yadav, petitioners herein under Section 341, 323, 324/34 of the I.P.C.

6. Learned advocate for the petitioners further submits that petitioners are octogenarian persons, petitioner no.1 is aged about 83 years and petitioner no.2 is aged about 81 years. At this age if they are sentenced to suffer imprisonment the reformative cause of criminal administration of justice will be at stake.

7. The learned APP for the State on the other hand submits that the evidence on record is sufficient against the petitioners to hold that they committed the offence under Sections 341, 323, 324 of the I.P.C., accused Birendra Yadav assaulted the informant and Ranjeet by a knife under the instruction of the petitioners and therefore, the Trial Court rightly held the accused persons/petitioners guilty for committing offence under Section 341, 323, 324 of the I.P.C. with the aid of section 34 of the I.P.C.

8. At this stage, on careful perusal of the Lower Court Record specially the charge which was framed against the petitioners and Birendra Yadav, this Court finds that the Trial Court did not mention in the charge under Section 341 and 323 of the I.P.C. that the petitioners and one Birendra Yadav



committed such offence punishable under Section 341 and 323 of the I.P.C. in furtherance of their common intention under Section 34 of the I.P.C. If a charge is not framed against, the accused persons when there are more than one accused committing an offence with the aid of Section 34 of the I.P.C., the accused persons cannot be convicted on the principle of their common intention. At the same time it is found from the charge that the petitioners along with Birendra Yadav were charge under Section 324/34 of the I.P.C. Therefore, the Trial Court framed charge under Section 324 of the I.P.C. against the petitioners on the basis of the fact that they were sharing common intention amongst each other to commit offence of assault by a sharp cutting weapon to Ranjeet Kumar Yadav and the informant.

9. It is needless to say that the existence of common intention amongst the participants in a crime is the essential element for application of Section 34 of the I.P.C. It is not necessary that the acts of the several persons charge with the commission of offence jointly must be the same or identically similar. The acts may be different in character but must have been actuated by one and the same common intention in order to attract the provision. Section 34 of the I.P.C. does not say “the



common intention of all” nor does it say “and intention common to all”. Under the provision of Section 34 of the I.P.C. the essence of all the liabilities is to be found in the existence of a common intention animating the accused leading to the doing of a criminal act in furtherance of such intention. If the F.I.R. story as well as the evidence of the injured persons are looked into, it would be found that on the date and time of occurrence accused Madan Yadav called Ranjeet. He went there and Laxman directed Birendra “साला को मार डालो”. Then Birendra assaulted him on the left side of his chest with the help of knife. When Birendra was assaulting Madan caught hold of Ranjeet so that he could not flee away. Ranjeet raised hue and cry which attracted the de-fecto complainant. He was assaulted by Birendra with the help of knife on his right hand finger. This F.I.R. story was fully corroborated by the injured persons as well as the medical evidence. Therefore, I do not find any illegality or material irregularity in the orders passed by the Trial Court convicting the petitioners and sentencing them to suffer rigorous imprisonment for one year with fine to Madan Yadav and Laxman Yadav with the aid of Section 34 of the I.P.C. It is found from the evidence on record that the accused persons shared common intention to cause harm to the



informant and his brother Ranjeet Kumar. In furtherance of such common intention Birendra assaulted Ranjeet and Laxman. Madan and Laxman took active part in the incident by holding the hand of Ranjeet and directing Birendra to assault him.

10. Considering such aspect of the matter, this Court fully agrees with the order of conviction and sentence passed by the Trial Court and affirmed by the Appellate Court under Section 324 of the I.P.C..

11. With regard to sentence, I have considered the submission made by the learned advocate for the petitioners that the petitioners are octogenarian persons, charge was framed against them on 06.07.2005, they are facing the trial of causing hurt by a sharp cutting weapon for almost last 20 years. During this period of time, they obviously had undergone much agony and trauma.

12. Under such circumstance, this Court is of the view that sentence of imprisonment for a period of six months with fine of Rs.5,000/- each shall be just and proper for the offence punishable under Section 324/34 of the I.P.C. by the petitioners. Therefore, the order of sentence is modified, the petitioners are directed to suffer sentence of rigorous imprisonment of six months with fine of Rs.5,000/- each in default, simple



imprisonment for further period of three months each for committing offence punishable under Section 324/34 of the I.P.C.

13. With such modification, the instant revision is disposed of.

14. The petitioners are directed to surrender before the Trial Court within fifteen days from the date of communication of this order to suffer sentence.

15. Let a copy of this order along with the Lower Court Records be sent down to the Trial Court.

16. If the fine amount is paid, half of the amount shall be paid to Ranjeet Kumar Yadav as compensation by the Trial Court.

(Bibek Chaudhuri, J)

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