

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.1056 of 2018

Arising Out of PS. Case No.-67 Year-1996 Thana- BOCHAHAN District- Muzaffarpur

1. Md. Hussain S/o Late Abdul Latif,
2. Abdul Majid S/o Late Abdul Latif,
3. Md. Kayum S/o Late Abdul Latif,
4. Md. Shamim S/o Md. Hussain,
5. Md. Mainudin S/o Late Ibrahim Miya,
All are R/o Vill.- Chaupur, P.S.- Bochaha, District- Muzaffarpur.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Md. Mojibul Rahman S/o Md. Mojim, R/o Vill.- Chaupar, P.S.- Bochaha,
District- Muzaffarpur.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Ravi Ranjan, Advocate Mr. Jitendra Kumar Shrivastava, Advocate
For the Respondent/s	:	Mr. Ganesh Prasad Singh, A.P.P.

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
ORAL ORDER

6 15-02-2024 Heard learned counsel for the petitioners and learned
Additional Public Prosecutor for the State.

2. The instant revision is directed against the judgment and order dated 26.07.2018 in connection with Bochaha P.S. Case No.67 of 1996 and the order of affirmation in appeal passed by the learned Additional Sessions Judge-I, Muzaffarpur in Criminal Appeal No.20 of 2013 whereby and whereunder the learned Judge in the First Appellate Court affirmed the order of conviction and sentence passed by the Trial Court holding the petitioners guilty for committing offence



under Section 147 read with Section 323 of the I.P.C. and they were sentenced to undergo imprisonment for six months respectively under both the sections and the said sentences were directed to run concurrently.

3. After the order of affirmation passed by the learned Appellate Court in Criminal Appeal No.20 of 2013 the petitioners have preferred the instant revision.

4. It is submitted at the outset by the learned advocate for the petitioners that amongst the petitioners, petitioners no.5 and 3 are octogenarian persons, petitioner no.4 is a juvenile. Other petitioners, namely, petitioner no.1 and 2 are also middle aged men. It is also submitted by the learned advocate for the petitioners that the petitioners also filed a counter case against the private opposite party no.2 over the self same incident. In the said case, the private opposite parties were granted the benefit of Probation of Offenders Act. However, in the instant case the petitioners were not granted such benefit though, two of the said persons are octogenarian and another petitioner was minor at the time of the incident.

5. It is further submitted by the learned advocate for the petitioners that in course of Trial, the prosecution examined in all eight witnesses. Amongst them PW-1 Md. Allaudin, PW-2



Md. Nayeem, PW-3 Ali Mohammad are the relatives of the petitioners. The evidence of PW-4 should not be entertained on the ground that he was inconsistent in his evidence before the Trial Court. PW-5 and 6 did not depose anything in support of the charge against the petitioners. Petitioner No.7 is the informant of the case and his evidence also suffers from material contradictions, PW-8 is the medical officer who medically examined the victim after the incident.

6. At the outset, this Court likes to state that in order to bring home a charge under Section 147 of the I.P.C., the prosecution is required to prove a case of rioting. Section 146 defines rioting in the following manner :-

“Section 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.”

7. Therefore, it is the duty of the prosecution to prove that the accused persons had formed an unlawful assembly. The word ‘unlawful assembly’ is defined in Section 141 of the I.P.C. and the said provision runs thus :-

“An assembly of five or more persons is designated an “unlawful assembly”, if the common object of the persons



composing that assembly is:

- 1. 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*
- 2. To resist the execution of any law, or of any legal process; or*
- 3. To commit any mischief or criminal trespass, or other offence; or*
- 4. 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*
- 5. 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.*

8. Section 147 of I.P.C. makes every member of unlawful assembly at the time of committing the offence guilty of such offence on the ground of vicarious liability against the members of unlawful assembly and if some force or violence is used by any member of the unlawful assembly, with the aid of vicarious liability all the members of the said unlawful assembly will be liable to be guilty of the offence.”

9. In the instant case, there is absolutely no evidence that the accused persons had shared a common object of assaulting the victim. In the absence of such evidence of



common object within the meaning of Section 141 of the I.P.C., no charge under Section 147 of the I.P.C. is said to be established and all the accused persons cannot be held guilty on the principle of vicarious liability.

10. Now, comes the question under Section 323 of the I.P.C., it is found from the evidence of the witnesses as well as the medical examination report of the victim that the accused persons had caused hurt to the victims.

11. Therefore, they are liable to be convicted under Section 323 of the I.P.C.

12. However, the petitioners are not seasoned offenders, there is no criminal track record against the petitioners. Out of a village dispute the petitioners committed the offence of simple assault/hurt out of rage.

13. Considering such aspect of the matter and in view of the fact that the petitioners were already in custody for about three months, the order of conviction and sentence under Section 323 of the I.P.C. be limited to the period during which the petitioners were in custody.

14. Detention period of the petitioners in custody during investigation and Trial shall be set off against the actual punishment which has been reduced by this Court by simple



imprisonment of three months.

15. With the above order, the instant revision is disposed of.

(Bibek Chaudhuri, J)

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