

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.3532 of 2023

Arising Out of PS. Case No.-87 Year-2017 Thana- SIKTA District- West Champaran

HARUN SHEKH @ HARUL SHEKH SON OF LATE SHEKH BARAKAT
RESIDENT OF VILLAGE- KURSHI BARWA, PS- SIKTA, DISTRICT-
WEST CHAMPARAN

... .. Appellant/s

Versus

1. The State of Bihar
2. HARENDRA RAM SON OF LATE PRASAD RAM RESIDENT OF
VILLAGE- KURSHI BARWA, PS- SIKTA, DISTRICT- WEST
CHAMPARAN
3. BALDEV RAM SON OF LATE PRASAD RAM RESIDENT OF
VILLAGE- KURSHI BARWA, PS- SIKTA, DISTRICT- WEST
CHAMPARAN
4. RAMDEV RAM SON OF LATE PRASAD RAM RESIDENT OF
VILLAGE- KURSHI BARWA, PS- SIKTA, DISTRICT- WEST
CHAMPARAN

... .. Respondent/s

Appearance :

For the Appellant/s : Mr.Bimlesh Kumar Pandey, Adv.
For the State : Mr.Abhay Kumar, APP
For the respondents No. 2to 4: Mr. B. N. Mishra, Adv.

CORAM: HONOURABLE MR. JUSTICE SHAILENDRA SINGH
ORAL ORDER

5 15-03-2024 1. Heard Mr. Bimlesh Kumar Pandey, learned counsel
for the appellant, Mr. Abhay Kumar, learned APP for the State
and Mr. B.N. Mishra, learned counsel for the respondents No. 2
to 4.

2. The instant appeal has been filed under section
11(2) of the Probation of Offenders Act, 1958 (in short ‘the
Act’) and in this appeal the order dated 27.05.2023 passed by
learned Additional Sessions Judge-IX, West Champaran, Bettiah



in Sessions Trial case No. 258 of 2018 (arising out of Sikta P.S. case No. 87/ 2017), whereby and whereunder the learned trial court released the respondents No. 2 to 4 under section 4(3) of the Act on execution of bond to maintain peace and good conduct for one year instead of sentencing the said respondents adequately for the offences punishable under sections 341, 323, 325, 504 read with section 34 of the IPC for which they were held guilty, has been challenged.

3. Mr. Bimlesh Kumar Pandey, learned counsel for the appellant submits that on 11.06.2017, when the informant, Harun Shekh, was going to see his sugarcane field then the respondents No. 2 to 4 and others, who used to assault and extort the people, ambushed the informant and the respondent No.2 took Rs. 1000/- from his pocket and the respondent No.4 was having a knife and other accused persons were having pistol, *Lathi*, *Danda* etc. and they started assaulting the informant by the said means and when Farida Khatoon and Hasina Khatoon came to rescue the informant, she was also assaulted by the accused persons. He further submits that on the basis of the said allegations the police charge-sheeted the respondents No. 2 to 4 and thereafter the learned trial court framed the charges under sections 308/34 341, 323, 325/34



and section 504/34 of the IPC upon the respondents No. 2 to 4 and during trial, sufficient and relevant evidence was given by the prosecution to prove the said charges and consequently, the learned trial court held the respondents No. 2 to 4 guilty for the offences punishable under sections 341, 323, 325 and 504 read with section 34 of the IPC. He further submits that the informant sustained three injuries on his person, out of them, one injury, which was found on his right leg was opined to be grievous in nature on account of fracture of tibia and fabula of his right leg, hence, the respondents were rightly convicted for the alleged offences including the major offence punishable under section 325 of the IPC for which there is provision of punishment up to seven years with or without fine but the learned trial court did not take into account the seriousness of the occurrence and without assigning any reason, granted the respondents No. 2 to 4 a benefit under section 4(3) of the Act. Learned counsel further submits that in view of the nature of the allegation, the respondents must have been directed to execute the bond to maintain peace and good conduct at least for three years period which is necessary to protect the family members of the informant as well as the society from the acts of the respondents who may again commit the same offences.



4. Mr. B. N. Mishra, learned counsel for the respondents No. 2 to 4 submits that in view of the genesis of the occurrence, nature of the allegation and other relevant materials, which were taken into account by the learned trial court, there is no illegality in the order of sentence and the learned trial court has rightly exercised its discretion which has been conferred under section 4 of the Act.

5. Heard both the sides and perused the order of sentence as well as other relevant materials.

6. The evidence of prosecution witnesses goes to show that informant was assaulted by means of *Lathi* and *Danda*, though, some witnesses stated that knife was also used in assaulting the informant but medical evidence does not show any type of sharp cut injury to the informant. He sustained three injuries in the alleged occurrence, out of which two injuries were opined to be simple in nature and one injury found at non vital part of his body, i.e., right leg was opined to be grievous in nature. Some material witnesses of the prosecution stated that the informant was assaulted by means of *Lathi* and *Danda* by more than five persons but they could not depose the reliable evidence to show the specific role of the respondents No. 2 to 4 in causing fracture injury on the leg of the informant. From the



prosecution's evidence, it does not appear that the alleged occurrence was pre-planned and in this regard, evidence of PW 4 is relevant. The learned trial court took into account the land dispute which was running in between both the parties and also considered the recommendation made by the Probation Officer while granting respondents No. 2 to 4 a benefit under section 4 of the Act. All these facts are sufficient to justify the learned trial court's direction to release the respondents No. 2 to 4 under section 4(3) of the Act, however, the period for which the respondents No. 2 to 4 have been directed to execute the bond to maintain peace and good conduct does not appear to be proper as in view of the nature of the dispute, which is running in between both the parties, there is reasonable apprehension in the mind of prosecution party that the respondents No. 2 to 4 may again commit *mar-pit* with them. So, in view of this apprehension as well as nature of allegation and genesis of the occurrence, the respondents No. 2 to 4 ought to have been directed to execute the bond under section 4(3) of the Act for at least three years period which would have served the ends of justice.

7. For the aforementioned reasons, this court finds no reason to interfere in the order of sentence of the learned trial



court as to releasing the respondents No. 2 to 4 under section 4(3) of the Act and also does not find any reason to interfere in the said conclusion of the learned trial court but however in the interest of justice, the said order is modified to this extent that the respondents No. 2 to 4 shall execute the bond, as required, under section 4(3) of the Act for three years period for maintaining peace and good conduct and all other conditions which have already been fixed by the learned trial court in the order of sentence with regard to the sureties etc. shall remain unchanged except the period which shall now be considered for three years.

8. In the result, the instant appeal stands allowed partly with the modification in the order of sentence as aforementioned.

(Shailendra Singh, J)

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