

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.733 of 2019

Arising Out of PS. Case No.-140 Year-1998 Thana- KATORIYA District- Banka

1. Kaleshwar Yadav Son of Late Jago Yadav Resident of Village - Jamkhut Tola Baratand, P.S.- Katoria, Dist.- Banka.
2. Maharaji Yadav Son of Late Ayodhi Yadav Resident of Village - Jamkhut Tola Baratand, P.S.- Katoria, Dist.- Banka.
3. Bhim Yadav Son of Late Jago Yadav Resident of Village - Jamkhut Tola Baratand, P.S.- Katoria, Dist.- Banka.
4. Arjun Yadav Son of Late Jago Yadav Resident of Village - Jamkhut Tola Baratand, P.S.- Katoria, Dist.- Banka.
5. Poplal Yadav Son of Late Musho Yadav Resident of Village - Jamkhut Tola Baratand, P.S.- Katoria, Dist.- Banka.
6. Tilak Yadav Son of Late Mali Yadav Resident of Village - Jamkhut Tola Baratand, P.S.- Katoria, Dist.- Banka.
7. Mohan Yadav Son of Late Jageshwar Yadav Resident of Village - Jamkhut Tola Baratand, P.S.- Katoria, Dist.- Banka.
8. Binod Yadav Son of Late Jageshwar Yadav Resident of Village - Jamkhut Tola Baratand, P.S.- Katoria, Dist.- Banka.
9. Bhagwat Yadav @ Bhagat Yadav Son of Jaldhar Yadav Resident of Village - Jamkhut Tola Baratand, P.S.- Katoria, Dist.- Banka.
10. Sarju Yadav @ Saryug Yadav Son of Late Hari Yadav Resident of Village - Jamkhut Tola Baratand, P.S.- Katoria, Dist.- Banka.
11. Chunchun Yadav Son of Bhajanlal Yadav Resident of Village - Jamkhut Tola Baratand, P.S.- Katoria, Dist.- Banka.
12. Birju Yadav Son of Late Jagdish Yadav Resident of Village - Jamkhut Tola Baratand, P.S.- Katoria, Dist.- Banka.
13. Basudeo Yadav Son of late Mathuri Yadav Resident of Village - Jamkhut Tola Baratand, P.S.- Katoria, Dist.- Banka.

... .. Petitioner/s

Versus

The State of Bihar

... .. Respondent/s



Appearance :

For the Petitioner/s : Mr. Balram Kapri, Advocate
For the State : Mr. Nirmal Kumar Sinha, APP

CORAM: HONOURABLE MR. JUSTICE JITENDRA KUMAR
ORAL JUDGMENT

Date : 31-01-2025

The present revision petition has been preferred by the petitioners against the judgment and order dated 24.04.2019 passed by learned Additional District and Sessions Judge-IV, Banka in Cr. Appeal No. 29 of 2016, whereby learned Appellate Court has upheld the judgment of conviction and order of sentence passed by learned Court of Sub-Divisional Judicial Magistrate, Banka in G.R. No. 965 of 1998 corresponding to Trial No. 968 of 2016, whereby learned S.D.J.M. had convicted the petitioners under Sections 147, 148, 149, 341 and 323 of the Indian Penal Code and sentenced them to rigorous imprisonment for a term of one year and a fine of Rs.1,000/- for offence punishable under Sections 147 of the Indian Penal Code, for a term of 2 years and a fine of Rs.1,000/- for offence punishable under Section 148 of the Indian Penal Code, for a term of one year and a fine of Rs.1,000/- for offence punishable under Section 323 of the Indian Penal Code and for a term of one month for the offence punishable under Section 341 IPC and in case of default to pay the fine, there was direction to the petitioners to undergo additional simple imprisonment for 2



months. All the sentences were directed to run concurrently.

2. As per the prosecution case, the convict-petitioners have assaulted Bishun Yadav, Dashrath Yadav, Yogeshwar Yadav and Binod Yadav. After lodging of the F.I.R., charge-sheet was submitted after investigation and cognizance was taken and during the trial, charge was framed against all the petitioners under Sections 147, 148, 149, 323, 324, 341 and 504 of the Indian Penal Code and during trial, altogether seven prosecution witnesses have been examined but neither informant, even nor Doctor nor I.O. were examined on behalf of the prosecution to prove its case against the petitioners.

3. Altogether seven prosecution witnesses were examined on behalf of the prosecution. P.W.1 is Bishnudeo Yadav, who is said to be an eye-witness to the occurrence. P.W.2, Binod Yadav, is also one of the injured persons. P.W.3, Dashrath Yadav, is also one of the injured persons. P.W.4, Govind Yadav, has also deposed as injured witness. P.W.5, Bhujali Yadav, has also claimed to be injured. P.W.6, Rameshwar Yadav, has also claimed to be injured. P.W.7, Kuldeep Yadav, is brother of Diwakar Yadav.

4. No witnesses have been examined on behalf of the petitioners in their defence.



5. I heard learned counsel for the petitioners and learned APP for the State.

6. Learned counsel for the petitioners submits that petitioners are innocent and have been falsely implicated on account of land dispute. He further submits that no material witnesses have been examined like informant, the Doctor who is said to have examined the injured persons and the Investigating Officer. For want of examination of the Doctor, neither injury could be proved nor injury report could be brought on record.

7. He further submits that for want of examination of Investigating Officer, the place of occurrence could not be proved, nor contradictions taken by the defence could be confronted to the Investigating Officer. Hence, material prejudiced has been caused to the petitioners in the trial.

8. Even informant could not come forward for deposition during trial. He further submits that the witnesses, who have been examined, have made contradictory statements. They have also not deposed about any specific injury caused by the petitioners. It is not clear from the deposition who caused what injury to whom. Hence, the prosecution has badly failed to prove its case beyond all reasonable doubt and petitioners are entitled to benefit of doubt.



9. However, learned APP for the State defends the impugned judgment and order submitting that there is no illegality or infirmity in it and the petition is liable to be dismissed.

10. I considered the submissions advanced by both the parties and perused the material on record. I find that there is allegation of assault by the petitioners to the informant and his family members. However, what injury has been caused by whom and to whom could not be proved by the prosecution during the trial. The doctor who is said to have examined the injury of the injured persons has not been examined during the trial. The injury report is also not exhibited on record. Even I.O. has not been examined. Hence, place of occurrence could not be established, nor contradiction pointed out by the defence could be confronted. Hence, prejudice has been caused to the petitioners during the trial.

11. As such, prosecution has failed to prove its case against the petitioners beyond all reasonable doubts, entitling them to acquittal. Accordingly, the impugned judgment and order dated 24.04.2019 passed by learned Additional District and Sessions Judge-IV, Banka in Cr. Appeal No. 29 of 2016 and order dated 03.08.2016 passed by Sub-Divisional Judicial



Magistrate, Banka in G.R. No. 965 of 1998 and Trial No. 968 of 2016 are set aside.

12. The present petition stands allowed, accordingly.

(Jitendra Kumar, J.)

ravishankar/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	04.02.2025.
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