

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.859 of 2018**

Arising Out of PS. Case No.-2 Year-2006 Thana- HALSI (RAMGARH CHOWK) District-
Lakhisarai

Navlesh Yadav @ Kumar Navlesh Rai S/o Late Ganga Prasad Yadav, R/o
Vill.- Durdih, P.S.- Ramgarh Chowk, District- Lakhisarai Bihar.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Ram Thakur Saw, S/o Late Ramrup Saw, R/o Vill.- Ramgarh Chowk, P.S.-
Ramgarh Chowk, Halsi, District- Lakhisarai, Bihar.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Y. V. Giri, Sr. Advocate with Mr. Pranav Kumar and Mrs. Shristi Singh, Advocates
For the State	:	Mr. Jharkhandi Upadhyay, APP
For the O.P. No. 2	:	Mr. Manoj Kumar Gupta, Advocate

**CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT**

Date : 14-11-2019

Heard learned counsel for the petitioner; learned APP for
the State and learned counsel for the opposite party no. 2.

2. The petitioner has moved the Court against the
judgment and order dated 10.04.2018 passed by the Sessions
Judge, Lakhisarai in Criminal Appeal No. 24 of 2017 by which the
judgment and order of conviction and sentence dated 30.08.2017
passed by the Judicial Magistrate, 1st Class, Lakhisarai in Halsi
(Ramgarh Chowk) PS Case No. 2 of 2006, corresponding GR No.
11 of 2006, has been upheld.

3. The petitioner and another co-accused, were charged
under Sections 341/323/337/504/34 of the Indian Penal Code and



upon trial were acquitted under Sections 337 and 504 of the Indian Penal Code but convicted under Sections 323 and 341 of the Indian Penal Code and were given benefit under Section 3 of the Probation of Offenders Act, 1958 by letting them off after due admonition. In Criminal Appeal No. 24 of 2017 filed by the petitioner and the other co-accused the judgment of the trial Court has been upheld.

4. Learned counsel for the petitioner submitted that the orders of the trial Court as well as the Appellate Court are totally oblivious of the inherent contradiction between the initial FIR and the story developed by the prosecution witnesses during trial. It was submitted that in the FIR, the story is that the petitioner along with another co-accused had come and had abused and assaulted the informant and then assaulted his son and brother, whereas in his deposition before the Court as PW 4 he has stated that the petitioner had assaulted his brother and son. Further, it was submitted that in the FIR the genesis is that the petitioner wanted to put up a *gumti* in front of the land of the informant which was objected resulting in the incident whereas during trial in the deposition, it has been stated that for the *gumti* the petitioner and the other co-accused demanded either extortion or removal of the *gumti*. It was submitted that even the Doctor and the Investigating



Officer not being examined, it could not be said with certainty as to whether there was assault and further whether the assault was by *lathi* and *khanti*, as alleged. Learned counsel submitted that PW 2, who is the brother of the informant and is said to be one of the injured, has stated that he was in his *gumti* and the petitioner along with the other co-accused had come and demanded extortion or in the alternative removal of *gumti*, which was objected to resulting in assault. Further, it was submitted that even PW 3, who is the son of the informant, and was injured, had not indicated any assault on his father, i.e., PW 4/ informant and has only mentioned about injury inflicted on himself and his uncle, i.e., PW 2, which is the departure from the story in the FIR. Learned counsel submitted that even the place of occurrence has not been proved as the Investigating Officer has not been examined, inasmuch as, in the FIR, the place of occurrence is said to be at the house of the informant whereas in their deposition the witnesses indicated that it was at the *gumti*, which are different. It was further submitted that there is admission by the informant of there being land dispute and, thus, in such background, the version of the prosecution witnesses, who are all interested witnesses, cannot be relied upon, as there is no independent corroboration on any issue. Learned counsel submitted that the Doctor has not been examined so as to



prove the injury. It was, thus, submitted that when neither place of occurrence nor injury has been proved, for which there is no explanation, and there also being a counter case, the conviction of the petitioner based on such evidence cannot be sustained. It was further submitted that even the trial Court has written in the judgment that the prosecution was not able to prove its case beyond reasonable doubt due to contradictions but it has not been taken to its logical conclusion which should have resulted in acquittal of the petitioner.

5. Though, learned counsel for the informant appeared but he did not argue taking the plea that the client had not supplied him any document.

6. Learned APP submitted that the trial Court has carefully gone through the evidence of witnesses and, thus, had not convicted the petitioner under Sections 337 and 504 of the Indian Penal Code and offence only with regard to Sections 323 and 341 of the Indian Penal Code has been held proved against them which is borne out from the evidence of the witnesses. It was submitted that non-examination of the Doctor and the Investigating Officer will not prove fatal to the prosecution for the reason that the conviction being under Sections 323 and 341 of the Indian Penal Code where the requirement is of the assault being proved and not



the reason behind the assault. It was submitted that the Court has further been indulgent in giving benefit of Section 3 of the Probation of Offenders Act, 1958 by releasing the petitioner after due admonition. Learned counsel submitted that PWs 2, 3 and 4 have consistently stated with regard to assault by the petitioner and the same also being not shaken or rebutted in cross-examination, the Court has rightly relied upon the same. Learned counsel submitted that with regard to variation in sequence of events in the FIR and what has been stated by the witnesses during examination, the same are not of such a nature which would discredit the prosecution story and rightly the trial Court itself has taken care of noting in the judgment that the chaff had to be removed from the grain and, thus by applying such principle, as laid down in law to the facts and circumstances of the present case and the evidence adduced by the prosecution witnesses, has rightly come to the conclusion that assault and wrongful restraint have been proved and finding of conviction has been recorded under Sections 323 and 341 of the Indian Penal Code.

7. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court does not find any merit in the present application.



8. In the present case, the Court would only look as to whether the reasoning given by the Courts below are in consonance with the evidence and other materials before it. For the purposes of proving offences under Sections 323 and 341 of the Indian Penal Code, the only thing required to be proved is that the act was committed with the intention of causing hurt to any person. In the present case, where the consistent evidence of the witnesses examined is that the petitioner also had weapon in his hand and had assaulted them and the same not having been disproved by any other witness or contradicted in the cross-examination, recording of finding of guilt under Sections 323 and 341 of the Indian Penal Code cannot be said to be unsustainable. Thus, on an overall consideration of the issues involved, in the facts and circumstance of the case, the orders of the trial Court as well as the Appellate Court need no interference and accordingly the application stands dismissed.

9. Let the Lower Court Records be returned forthwith.

(Ahsanuddin Amanullah, J)

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