

Abdul Hakim and ors. Vs. the State of Bihar and anr.

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Court : Patna

Decided On : Nov-11-2003

Judge : Chandramauli Kr. Prasad, J.

Acts : Indian Penal Code (IPC), 1861 - Sections 34, 323 and 324

Appeal No. : Criminal Revision No. 602 of 2002

Appellant : Abdul Hakim and ors.

Respondent : The State of Bihar and anr.

Advocate for Def. : Sandeep Kumar, Adv. for O.P. No. 2

Advocate for Pet/Ap. : Uma Kant Shukla and Shakti Suman Kumar, Advs.

Disposition : Revision application dismissed

Judgement :

Chandramauli Kr. Prasad, J.

1. Petitioners were put on trial for the offence under Section 341/34, 323/34, 379/34 and 324/34 of the Indian Penal Code, hereinafter referred to as the IPC. The Judicial Magistrate, 1st Class, Sadar, Motihari, by judgment dated 5th of September, 2000 passed in G.R. Case No. 1372 of 1996 (Trial No. 1107 of 2000), held them guilty for the offence under Section 324/34 and 323/34 of the IPC and

sentenced them to undergo rigorous imprisonment for six months and three months respectively. However, petitioners were acquitted of the other charges.

2. Aggrieved by the same, they preferred Cr. Appeal No. 54/2 of 2000/2001 and the learned 1st Additional District and Sessions Judge, Motihari by judgment dated 7th of June, 2002, set aside the conviction of the petitioners under Section 324/34 of the IPC but affirmed their conviction with modification in the sentence under Section 323/34 of the IPC. The appellate Court reduced the sentenced to rigorous imprisonment for three months.

3. According to the prosecution, on 4-8-1996, scuffle and exchange of abuses took place between the children of the informant Asghar Ali and the petitioners and on account thereof, petitioners came to the house of the informant and assaulted him. It is alleged that when informant Asghar Ali was being assaulted, his wife Salima Khatoon came to his rescue but she was also assaulted by petitioner Abdul Hafiz. The injured were brought to the Referral Hospital, Chakia and on the basis of the statement, Chakiya P.S. Case No. 63/96 was registered. The police, after investigation, submitted charge sheet against the petitioners and ultimately, they were put on trial.

4. The learned Magistrate as also the appellate Court had, on appreciation of evidence, held the petitioners guilty of offence under Section 323/34 of the IPC and sentenced them as stated above.

5. Mr. Shukla, appearing on behalf of the petitioners submits that in view of the material available on record he cannot legitimately question the conviction of the petitioners but submits that ends of justice shall be met if the petitioners' sentence is reduced to the period already undergone by them. He points out that the occurrence had taken place as back as on 4-8-1996, petitioners have suffered the ordeal of trial and appeal for about six years and have also remained in jail for about two weeks. It has also been pointed out that the petitioners as also the accused persons are co-villagers.

6. Mr. Sandeep Kumar appears for Opposite Party No. 2 and submits that in the facts of the present case, petitioners have been rightly sentenced to undergo

rigorous imprisonment for three months by the appellate Court.

7. Having considered the rival contentions, I find substance in the submission of Shri Shukla. As pointed out by him, the occurrence had taken place on 4-8-1996, petitioners have remained in jail for about two weeks and they have undergone the ordeal of trial and appeal for such a long period. In the facts of the present case, I am of the opinion that ends of justice shall be met if the period of substantive sentence is reduced to period already undergone by them but they are imposed a fine of Rs. 250/- each and in default, to suffer rigorous imprisonment for four weeks. Petitioners' depositing the fine amount, same shall be paid to the informant. Mr. Shukla states that the fine amount shall be deposited within three months.

8. Revision application stands dismissed with the modification in the sentence only.

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