
(1999) 07 PAT CK 0066
In the Patna High Court
Case No : Criminal Revision 131 of 1994

Bacha Rai @ Merha Rai and Others

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 23-07-1999

Acts Referred:

Penal Code, 1860 (IPC) — Section 380, 411, 457

Citation : (1999) 47 BLJR 1893 : (1999) CriLJ 4808

Hon'ble Judges : Sudhir Kumar Katriar, J

Bench : Single Bench

Advocate : Yogesh Chandra Verma, for the Appellant; Damodar Pd. Tiwari, for the Respondent

Judgement

Sudhir Kumar Katriar, J.—This criminal revision application is directed against the judgment dated 4-12-1993, passed by the learned 3rd Addl. Sessions Judge, Motihari, in Criminal Appeal No. 39/26 of 1989/91 (Bacha Rai v. State of Bihar), affirming in full the conviction and sentence recorded by the learned Judicial Magistrate, Ist class, Sikrahna at Motihari, in Trial No. 110/89/G.R. No. 749/74 (State of Bihar v. Bacha Ram alias Mehta Ram), by judgment dated 31 -3-89. Both the Courts below have concurrently held that the three accused-petitioners are guilty of offence u/s 380, IPC and have sentenced them to undergo rigorous imprisonment for two years each and fine of Rs. 100/- each.

2. The prosecution case in brief is that on 9-11 -74 at 4 a.m. the informant woke up on hearing the sound of "Kharkharahat". He woke Gajanand Sah, Maheshwar Tewari, Ram Deyal Mahto and saw the petitioners fleeing way with paddy on head. The petitioners subsequently threw away paddy and hid themselves but were caught hold of. In the morning along with the Choukidar the petitioners were taken to Adapur police station where an FIR was registered at 1 p.m. on 9-11-74 under Sections 380, 411 and 457, IPC. After investigation the petitioners were chargesheeted. They were however, tried under Sections 380 and 457, IPC. The trial Court by its judgment dated 21-3-89 convicted the three

petitioners herein u/s 380, IPC and sentenced them as stated above, They have, however, been acquitted of the charge u/s 457, IPC. The appeal was dismissed. Hence the present criminal revision application.

3. Learned counsel for the petitioners submitted that the judgment of the Court of appeal below is perfunctory and almost amounts to non-application of the mind. It has not properly discussed the evidence and affirmed the judgment of the trial Court mechanically. He has also submitted that neither the informant nor the I.O. have been examined in support of the prosecution case. He lastly submitted that in view of the nature of the offence, the period already undergone by the petitioners would suffice. Petitioner No. 1 has already remained in custody for 59 days and petitioner Nos. 2 and 3 have been in custody for 49 days each.

4. Mr. Damodar Prasad Tiwari, learned counsel for the State submits in support of the impugned judgment that it were the petitioners who were to be blamed for the kind of judgment handed down by the appellate Court. They were very negligent before the appellate Court and did not appear on a number of dates including the date on which it was heard. He also submits that the sentence awarded to the petitioners is on the lighter side, inasmuch as the maximum punishment prescribed Under Sections 380, IPC is 7 years.

5. Having considered the rival submissions, I am of the view that this revision application has to be dismissed on merits and the conviction Under Sections 380, IPC has to be upheld. Both the Courts below have concurrently held that the petitioners are guilty of the offence Under Sections 380, IPC. It is concluded by Findings of facts. In such circumstances, the conviction recorded by the Courts before Under Sections 380, IPC is maintained.

6. Learned counsel for the petitioners is right in his submission that in view of conviction and the nature of the offence, the period already undergone by the petitioners will meet the ends of justice. Petitioner No. 1 has so far remained in custody for 59 days and petitioner Nos. 2 and 3 have been in custody for 49 days each. I am, therefore, of the view that this revision application should be allowed on the question of sentence and the period already undergone by the petitioners should be treated to be adequate sentence and will meet the ends of justice.

7. In the result, this criminal revision application is allowed in part. The conviction recorded by the Court below Under Sections 380, IPC against the three petitioners is maintained, It is, however, allowed on the question of sentence and the period already undergone by the petitioners is the punishment awarded to the petitioners. The petitioners are discharged from their bail bonds.