
(2019) 08 PAT CK 0074

In the Patna High Court

Case No : Criminal Revision No. 469 Of 2018

Bhagwan Yadav And Ors

APPELLANT

Vs

State Of Bihar And Anr

RESPONDENT

Date of Decision : 29-08-2019

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 397, 401

Citation : (2019) 08 PAT CK 0074

Hon'ble Judges : Ahsanuddin Amanullah, J

Bench : Single Bench

Advocate : Rajesh Kumar, Rajendra Singh Shastriji

Final Decision : Disposed Off

Judgement

1. Heard learned counsel for the petitioners and learned APP for the State.
2. Notice was earlier issued to the opposite party no. 2, but the report disclosed that he had died.
3. The petitioners have moved the Court under Sections 397 and 401 of the Code of Criminal Procedure, 1973, against the judgment dated 11.09.2006 passed in Cr. Appeal No. 41 of 2004, by the Additional Sessions Judge, FTC-II, Khagaria by which the judgment and order of conviction and sentence dated 22.09.2004 passed by the Additional Chief Judicial Magistrate, Khagaria in GR No. 726 of 1996 arising out of Parbatta PS Case No. 111 of 1996, has been upheld.
4. The limitation for filing of the Revision Application expired on 10th December, 2006. However, the application though presented before the Registry on 18.04.2018, has been made defect free on 25.04.2018. Thus, the same has been filed after more than 11 years for which, Interlocutory Application No. 1474 of 2018 has been filed seeking condonation of delay. However, no order has been passed on the said Interlocutory Application and, thus, limitation has still not been condoned though the application has been admitted for hearing.

5. Learned counsel for the petitioners submitted that being labourers, they had gone out of the State to earn being under the impression that they had to do nothing as the case filed was under bailable sections.

6. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties and the averments made in the Interlocutory Application, the Court finds that there is absolutely no explanation for the delay except that because the case was lodged under bailable sections, the petitioners had gone outside the State for earning their livelihood and did not know about the present case and only after warrant issued on 08.02.2018, they had taken steps for filing the case.

7. Thus, in the considered opinion of the Court, there is absolutely no explanation for such unexplained and inordinate delay of over 11 years. Further, the stand that after the case was filed, the petitioners after lodging of the case had gone outside the State and had no knowledge about further proceeding is patently false, for the reason, that after the conviction, appeal was filed on their behalf which has also stood dismissed. Thus, the conduct of the petitioners discloses sheer casualness and grave laches on their part.

8. Accordingly, though the Court does not find any ground to condone such delay of over eleven years as there is absolutely no explanation forthcoming, still in the interest of justice, the Court has gone into the merits of the matter.

9. Learned counsel for the petitioners submitted that due to local rivalry, they have been falsely implicated. It was further submitted that the injuries were simple in nature.

10. Learned APP submitted that the petitioners along with four others stand convicted of assault by lathi, danda and also of brick batting.

11. The Court finds that the judgment passed by the trial Court as well as the appellate Court are sound, based on evidence and its proper appreciation. Thus, it does not find any ground to interfere in the conviction of the petitioners in its revisional jurisdiction. However, taking into account the fact that the dispute basically arose due to grazing of cattle and the injury suffered was simple in nature, the Court finds that since the petitioners have already gone incarceration for over five months, the sentence needs to be modified.

12. Accordingly, the application stands disposed off without interfering with the order of conviction but modifying the sentence of imprisonment to the period already undergone.

13. The Lower Court Records be returned forthwith.