

(2019) 09 PAT CK 0039
In the Patna High Court
Case No : Criminal Revision No. 700 Of 2018

Narayan Yadav And Ors

APPELLANT

Vs

State Of Bihar And Anr

RESPONDENT

Date of Decision : 06-09-2019

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 397, 401
Indian Penal Code, 1860 — Section 34, 386, 436

Citation : (2019) 09 PAT CK 0039

Hon'ble Judges : Ahsanuddin Amanullah, J

Bench : Single Bench

Advocate : Bidhanesh Misra, Tanuja Mishra, Jharkhandi Upadhyay

Final Decision : Disposed Off

Judgement

1. Heard learned counsel for the petitioners and learned APP for the State.
2. The petitioners have moved the Court under Sections 397 and 401 of the Code of Criminal Procedure, 1973 against the judgment dated 28.03.2018 passed in Criminal Appeal No. 43 of 2009 by the Additional Sessions Judge, FTC II, Madhepura by which the judgment and order of conviction and sentence dated 10.09.2009 passed in Sessions Trial No. 74 of 2004 by the 1st Assistant Sessions Judge, Madhepura relating to Kumarkhand PS Case No. 122 of 2003/G.R. Case No. 952 of 2003 has been upheld.
3. The allegation against the petitioners is that they under threat at gunpoint had got blank paper signed from the informant and also set fire to paddy and cotton fibre. Upon trial, they were convicted under Sections 386 and 436/34 of the Indian Penal Code and sentenced to three years rigorous imprisonment under Section 386 of the Indian Penal Code and 3 years under Section 436/34 of the Indian Penal Code and fine of Rs. 3,000/-and in default to undergo further rigorous imprisonment for three months. The same has been upheld in appeal.
4. Learned counsel for the petitioners submitted that no independent eye witness

has been examined during trial and the witnesses are merely hearsay. It was further submitted that the witnesses are interested as there was some enmity between the parties. Learned counsel submitted that though a seizure list was prepared but no seized article has been produced before the Court during trial. Learned counsel submitted that even with regard to the statement of the witnesses, the same is purely circumstantial as they have only stated that they had seen the petitioners running away from the site with firearms. It was submitted that at 12:00 o'clock at night in the village, identification cannot be with certainty and the statement that they had seen the petitioners in torch light is also not believable. Learned counsel submitted that during investigation it has come that there were other motives for the informant to falsely implicate the petitioners. Learned counsel submitted that the petitioners have already undergone imprisonment for more than three months.

5. Learned APP, from the Lower Court Records, submitted that the witnesses have clearly stated that the petitioners were running away from the place of occurrence and it is but natural that in villages people have torches at night because of uncertainty of electricity and witnesses identifying the petitioners who were running away from the site with firearms is a good circumstantial evidence to uphold their conviction. It was submitted that except for one witness, other witnesses have clearly stated that they have no enmity or dispute with the petitioners and, thus, their testimony cannot be discarded as motivated.

6. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties and going through the Lower Court Records and the judgments impugned, the Court does not find any occasion to interfere in the order of conviction, which is based on cogent material and sound appreciation of the depositions by the Courts below. However, on the point of sentence, the Court is inclined to modify the same.

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

8. The Lower Court Records be returned forthwith.