
(2000) 2 PLJR 465

Patna High Court

Case No: Criminal Revision No. 624 of 1998

Haridas Prasad @
Haridas Mahto

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision: Feb. 29, 2000

Acts Referred:

- Penal Code, 1860 (IPC) - Section 379
- Probation of Offenders Act, 1958 - Section 12, 3, 4

Citation: (2000) 2 PLJR 465

Hon'ble Judges: D.P.S. Choudhary, J

Bench: Single Bench

Advocate: Pandit Jee Pandey and Rita Kumari No. 1, for the Appellant; Ram Krishna Prasad, for the Respondent

Final Decision: Dismissed

Judgement

D.P.S. Choudhary, J.

This revision application is directed against the judgment and order dated 27.6.1998 passed by the 2nd Additional Sessions Judge, Patna in criminal appeal No. 158/1996, confirming the judgment dated 24.6.1996 passed by Sub Divisional Judicial Magistrate, Danapur in G.R. Case No. 202/1987, Tr. No. 400/1996 whereby and whereunder the Petitioner has been convicted u/s 379 of the Indian Penal Code and sentenced to pay a fine of Rs. 500/- and in default of payment of fine to undergo simple imprisonment of 3 months.

2. The prosecution case, in brief is that, one Yogendra Baitha in his written report before officer-in-charge of Harizan Thana Mithapur, Patna dated 1.9.1987, alleged that on 31.8.1987 at about 10.00 A.M. while he was ironing the clothes of his customers, in his house, the Petitioner armed with a Bhala alongwith 2 other accused variously armed with came and asked the informant to vacate the land as the land belonged to them. The

informant denied to vacate the land. Thereafter, Petitioner and other accused threatened to assault him and took away some unwashed clothes of his customers and also two (2) Irons worth Rs. 2,000/-. On hulla, other witnesses arrived and saw the occurrence. On the basis of the first information report, a case was registered and after investigation, charge-sheet submitted and after cognizance trial proceeded in the court below. During trial, the prosecution examined 5 witnesses, out of them P.W. 4 is the informant, P.Ws. 1, 2 and 3 are co-villagers and P.W. 5 is the formal witness. The Investigating Officer has not been examined. The court below after considering the evidence on record came to the finding that the prosecution has been able to substantiate the charge u/s 379 I.P.C. against the accused.

3. The learned lawyer appearing on behalf of the Petitioner submitted that no independent witness of the locality has been examined and only interested witnesses have supported the prosecution case. The Investigating Officer of the case has not been examined which caused prejudice to the Petitioner. It was also submitted on behalf of the Petitioner that there is delay in lodging of the case because the alleged occurrence took place on 31.8.1987 at about 10.00 A.M. but the first information report was lodged on 1.9.1987 at about 1.30 P.M. and there is no explanation for this delay.

4. The learned A.P.P. submitted that the delay in lodging the first information report has been explained. The delay was caused because of the distance between the place of occurrence and Harijan police station which is said to be at a distance of 20 K.M. Both the courts have held that the prosecution has been able to explain the delay in lodging the first information report, besides the informant has given other reasons also for his not going to Maner Police Station from the place of occurrence. The learned A.P.P. further submitted that non-examination of the Investigating Officer was not material in this case because the evidence on record shows that the offence was of petty nature, and the place of occurrence and other physical features which might have been noticed by the Investigating Officer during the investigation are not very relevant in this case. Besides, the defence has failed to point out any vital contradiction in the evidence of P.Ws. 1, 2 and 3 and their earlier statements made before the Investigating Officer, during the course of investigation of this case. The learned A.P.P. further submitted that P.Ws. 1, 2 and 3 are co-villagers and only on the ground that they are interested witnesses, their evidences should not be discarded if, they are otherwise reliable and truthful.

5. I have perused the judgment of the courts below and come to the finding that the courts below have dealt with all these points raised before this Court. I find substance in the submissions made by the A.P.P. No substantial irregularity or illegality has been pointed out on behalf of the Petitioner in support of this revision.

6. The learned Petitioner's lawyer submitted that the Petitioner is a Government servant and his conviction may stand as an stigma in his service career. He submitted that the Petitioner may be given the benefits as provided under Sections 3 and 4 of the Probation of Offenders Act.

7. Considering the fact that the occurrence took place in the year 1987; and Petitioner is a Government servant and also considering the fact that there is no history of previous conviction against him, prayer of the Petitioner is allowed. Accordingly, instead of sentencing him to a fine of Rs. 500/- as imposed by the courts below the Petitioner is ordered to be released on entering into a bond of Rs. 1,000/- with one surety and directed to keep peace and be of good behaviour for a period of 1(one) year. It is made clear that this conviction of the Petitioner shall not suffer any disqualification, if any, attached to the conviction, as provided u/s 12 of the Probation of Offenders Act.

8. With this modification in the judgment and order of the courts below, this revision is dismissed.