

## Mahabir Prasad Vs The State of Bihar and Vishwanath Prasad

**Court:** Patna High Court

**Date of Decision:** Dec. 16, 2011

**Acts Referred:** Penal Code, 1860 (IPC) â€” Section 323, 324, 427

**Hon'ble Judges:** Amaresh Kumar Lal, J

**Bench:** Single Bench

**Final Decision:** Dismissed

### Judgement

Amaresh Kumar Lal, J.

The accused petitioner has preferred this revision application against the judgment and order dated 19.08.2002

passed by the learned 1st Additional Sessions Judge, Aurangabad in Cr. Appeal No. 71/1987/62/1997 by which the judgment and order of

conviction and sentence dated 29.08.1987 passed by the learned Judicial Magistrate, 2nd Class, Aurangabad in Complaint Case No. 329/1981,

Trial No. 3/1987 convicting and sentencing the accused for six months each under Sections 323 and 427 of the I.P.C. and one year u/s 324 of the

I.P.C. has been confirmed and the appeal has been dismissed.

2. The main contention of the learned counsel for the petitioner is that the petitioner has been suffering from mental agony for the last 30 years. The

date of occurrence is 11.06.1981 and the petitioner has also remained in custody for about two weeks. The petitioner has no criminal antecedent

and he is also more than 60 years. The petitioner should have been given benefit under the Probation of Offenders Act by the learned court below.

He has also submitted that there is a case and counter case for the same occurrence. The petitioner has also lodged a case against the complainant

in which he has also been convicted for two years.

3. The learned counsel for the State could not controvert the contention of the learned counsel for the petitioner.

4. After hearing the learned counsel for both the parties and on perusal of the material on the record, it appears that the contention of the learned

counsel for the petitioner is correct. The petitioner has been suffering from mental agony for more than 30 years. He has also remained in custody

for some time.

5. Considering the facts and circumstance, the sentence of the petitioner is reduced to the period undergone in custody.

6. With this modification in the sentence, this revision application is dismissed.