

(1998) 12 PAT CK 0007

In the Patna High Court

Case No : Criminal Revision No. 589 of 1995

Devi Pandit, Naurangi Pandit and Guljari Prasad

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 14-12-1998

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 133, 360
Penal Code, 1860 (IPC) — Section 109, 144, 435

Citation : (1999) 1 PLJR 279

Hon'ble Judges : R.N. Sahay, J

Bench : Single Bench

Advocate : Ashok Kumar Mishra No. 2, for the Appellant; Assistant Public Prosecutor, for the Respondent

Judgement

R.N. Sahay, J.—By the judgment and order dated 3rd July, 1989 in Trial No. 132/89 the first class Judicial Magistrate," Jehanabad convicted all the three Petitioners u/s 144 I.P.C. and sentenced them to simple imprisonment for six months. Petitioner No. 1 Devi Pandit was further convicted u/s 435 I.P.C. and sentenced to imprisonment for one year. Petitioner No. 2-Naurangi Pandit was also convicted u/s 435/109 IPC and sentenced to undergo simple imprisonment for six months.

2. The learned Additional Sessions Judge, Jehanabad dismissed the appeal but instead of jail imprisonment ordered the Appellants to execute a bond of Rs. 2000/- each with two sureties u/s 360 Code of Criminal Procedure to keep peace for a period of one year. This Court while admitting this revision application stayed the execution of bend.

3. The Petitioners were prosecuted on a written report of one Hari Paswan dated 26.3.79 to the officer incharge of Jehanabad police station to the effect that on the same day at about 7 A.M. Petitioner Devi Pandit came with his buffalow and started grazing his cocumber plants and pumpkin plants. At that time the complainant was at his house situated by the side of pokhar. The informant went

and protested and in the meantime Petitioner Naurangi came and started abusing him. Then other accused came and on the order of Petitioner Naurangi Pandit Petitioner Devi Pandit set the thatched hut of the informant on fire, causing burning of a hut and hen. The accused persons dismantled the hut.

4. The Petitioners seek to set aside the judgment of the Additional Sessions Judge and claimed that they are entitled to acquittal in the facts and circumstances of the case. The learned Addl. Sessions Judge dismissed the appeal and maintained the conviction of the Petitioners. He has considered the evidence of material witnesses in para 5 of his judgment as extracted below:

From perusal of the judgment of the learned lower Court it appears that the learned lower court has based his findings on the basis of the evidence of P.W. 5 Baijnath Paswan, P.W. 6 Sheomangal Paswan, P.W. 7 Shivdahan Paswan, P.W. 8 Krishna Paswan and P.W. 10 Hari Narayan, Paswan and the rest witnesses are either formal and tendered witnesses. Out of the above said witnesses P.W. 10 is the informant in this case. From perusal of his evidence it appears that he has fully supported his case as made out in his written report. His evidence is that the occurrence took place about seven years ago at 7 A.M. At that time he was doing the work of Nikauni in (sic) field adjacent to his house. In (sic) meantime Appellant Devi Pandit (sic) there and started grazing his Buffalo in his field. Thereupon he (sic) protest. At this Devi Pandit (sic) abusing him. Thereafter other acc(sic) persons came there and they (sic) abused him. In the meantime Appellant No. 2 gave order to set fire to his h(sic) and on his order Appellant Devi P(sic) set the house on fire as a res(sic) which the articles kept there inc(sic) a hen were burnt and thereafter th(sic) cused persons demolished the (sic) house and threw the mud in the (sic) He has further deposed that after occurrence he went to the police Station and gave his statement. He also identified the accused person dock. Thus the examination in charge P.W. 10 shows that he has fully ported the prosecution case as out in the written statement (E(sic) From perusal of the- record it ap(sic) that the evidence of P.W. 10 finc(sic) corroboration from the evidence P.W. 5, P.W. 6, P.W. 7 and P.W. 8 (sic) shows that they have also got the (sic) near the P.O. land which is a (sic) mazarua plot hearing plot No. (sic) From the cross examination of (sic) P.W.6, P.W.7, P.W. 8, P.W. 1Q it ap(sic) that a proceeding u/s 133 Code of Criminal Procedure going on between the informar the witnesses on the one hand a accused persons on the other h(sic) further transpires from the cro(sic) amination that the informant ar(sic) above said witnesses had c(sic) obstacle in the smooth flow of (sic) from the pond which gave rise (sic) proceeding u/s 133 Code of Criminal Procedure. The (sic)ment of the learned advocate Appellants is that the Appellants (sic) falsely implicated in this case (sic) the above mentioned proceedi (sic) 133 Code of Criminal Procedure. but I cannot agree w(sic) argument of the learned advo(sic) the Appellant as there are over (sic) ing evidence on record in sup(sic) the prosecution case and the defence case that the informant and the witnesses had created obstruction in the flow of water from the pond for which a proceeding u/s 133 Code of Criminal Procedure. was

started between the parties fully establishes this fact that the informant had got some construction, may be illegal near the pond which created obstacle in flow of the water from the pond. Thus the evidence on record established this fact that the informant had his house in the shape of thatched hut near the pond and therefore I am of the view that the learned lower court has rightly believed the evidence of the prosecution witness and found that all the Appellants after forming an unlawful assembly went over the P.O. and on the order of Appellant No. 2 Appellant No. 1 set fire to the hut of the informant and thereafter demolished the same.

5. I find that the learned Addl. Sessions Judge has taken pain to go to the evidence and affirmed the conviction of the Petitioners. There is no illegality in the judgment of the appellate court. The Petitioners were directed to execute a bond of Rs. 2000/- to keep peace for a period of one year. Since the occurrence is of the year 1979 that about 20 years back no useful purpose will be served for directing the Petitioner to execute bond of Rs. 2000/-for maintaining the peace. Accordingly the Petitioners shall not be required to execute bond because they were in custody for a few days. The revision application is disposed of accordingly.