
(2019) 07 JH CK 0231

In the Jharkhand High Court

Case No : Criminal Revision No. 351 Of 2013

Dudh Kumar Toppo And Ors

APPELLANT

Vs

State Of Jharkhand And Ors

RESPONDENT

Date of Decision : 12-07-2019

Acts Referred:

Indian Penal Code, 1860 — Section 323, 341
Code Of Criminal Procedure, 1973 — Section 200, 202, 376
Probation Of Offenders Act, 1958 — Section 4

Citation : (2019) 07 JH CK 0231

Hon'ble Judges : Deepak Roshan, J

Bench : Single Bench

Advocate : Gautam Kr. Singh, Dhiraj Kumar

Final Decision : Disposed Of

Judgement

Heard learned counsels for the parties.

The instant application is directed against the judgment dated 02.03.2013, passed by the learned Additional Sessions Judge-I, Rajmahal, Sahibganj in Cr. Appeal No.17/2010, whereby the learned appellate court concurred with the findings of the learned Judicial Magistrate 1st Class, Rajmahal in its judgment dated 09.04.2010, passed in P.C.R. Case No.68/2007, corresponding to T.R. No.805/2010, whereby the learned trial court found petitioners guilty for offence under Sections 323 and 341 of the Indian Penal Code and sentenced them for R.I for 6 months under Section 323 IPC and further sentence to undergo R.I for 15 days under Section 341 IPC.

The prosecution case in brief as contained in the written complaint dated 07.02.2007 is that on 05.02.2007 at 6 P.M in the evening while the complainant along with her father was returning from Pathna Haat (Daily Market) she was surrounded by the petitioners about half K.M away from her village. It has been further alleged that the petitioner no.1 put a country made pistol on the temple of the complainant and threatened to kill her if she raised an alarm and

thereafter took her to the side of the road and asked her to withdraw the criminal case pending in the Rajmahal court lodged by her against the petitioner no.1. It has been further alleged, even her father was assaulted by the petitioners and petitioner no.1 took away about Rs.2,000/- from the complainant.

After completion of inquiry under Sections 200 and 202 Cr.P.C. both the accused persons were ordered to face the trial and the substance of accusations were explained which they pleaded not guilty and claimed to be tried.

Altogether 4 witnesses were examined on behalf of the prosecution.

Based upon the evidences, the learned trial court found the petitioners guilty for offence under Sections 323, 341 IPC and sentenced them as aforesaid. The petitioners challenged the aforesaid order of learned trial court before the court of Additional Sessions Judge-I, Rajmahal, Sahibganj being Cr. Appeal No.17/2010. The learned appellate court after appreciating the evidences and finding given by the trial court and after hearing the arguments adduced by the parties, came to the specific conclusion that there is no error committed by the learned trial court in passing the impugned judgment. The learned appellate court did not interfere even in the sentence and held that the appellant no.1 cannot be given the benefit of Section 4 of Probation of Offenders Act in the background that he is already facing trial for the offence committed under Section 376 on the complaint of O.P. No.2 and as such, the learned appellate court fully concurred with the finding of the learned trial court.

The learned counsel for the petitioners vehemently argued and submitted that there are contradictions in the prosecution witnesses and prosecution has not been able to prove the place of occurrence. He further submitted that no independent witness has been examined and the prosecution witnesses are actually interested witnesses. He further submitted that at least petitioner no.2 should be given the privilege of Probation of Offenders Act.

Per contra, the learned counsel for the O.P. No.2 has opposed the prayer and submitted that the petitioner no.1 has already been convicted in the case for offence under Section 376 which was the root cause of this case. As a matter of fact when the said case was pending, petitioner no.1 along with petitioner no.2 threatened the victim-complainant and there are ample evidences to convict both the petitioners.

Heard learned counsels for the parties and perused the documents available on record along with the LCR. After careful and cautious scrutiny, it appears that P.W- 1, 2 and 3 stand corroborated by them made in the complaint petition. Non examination of independent witnesses cannot prejudice the prosecution case because it is a settled law that even one eye witness is sufficient to prove the case. It has come on evidence that petitioner was facing trial for offence under Section 376 and in order to pressurise the O.P. No.2, instant crime was committed. Learned counsel for the petitioners has failed to point out any error on record so as to warrant interference by this Court, as such, the conviction

held by the trial court as well as learned appellate court is hereby confirmed.

However, on the issue of sentence, so far as petitioner no.1 is concerned, I also agree with the findings of learned appellate court that he does not come under the parameters of law of Probation of Offenders Act, therefore, his sentence is confirmed. So far as petitioner no.2, who is not habitual offender and never misused the privilege of bail, and as such he is entitled to be released under Section 4 of Probation of Offenders Act. Hence, the petitioner no.2, namely, Baijnath Urawn @ Baijnath Toppo @ Baijnath Uraon is directed to be released under Section 4 of Probation of Offenders Act after entering into a bail bond of Rs.10,000/- with two sureties with a like amount each for keeping peace and good behaviour for a period of two years, failing which, he will serve the rest sentence as passed against him by the learned trial court.

With the aforesaid observations, the instant revision application is disposed of.

Let the lower court record be sent to the concerned court, forthwith.