
(2013) 12 PAT CK 0043

In the Patna High Court

Case No : Criminal Appeal (SJ) No. 317 of 2001

Mahanth Rajendra Das and Others

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 11-12-2013

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 203

Penal Code, 1860 (IPC) — Section 323, 436

Probation of Offenders Act, 1958 — Section 4

Citation : (2013) 12 PAT CK 0043

Hon'ble Judges : Anjana Prakash, J

Bench : Single Bench

Advocate : Prakritila Sharma and Mr. Prabhat Kumar, for the Appellant; Z. Hoda, APP., for the Respondent

Final Decision : Allowed

Judgement

Anjana Prakash, J.—The Appellants have been convicted u/s 323 IPC and released on probation of good conduct u/s 4 of the Probation of Offenders Act, 1958 after due admonition by the 4th Additional Sessions Judge, Sitamarhi in S.Tr. No. 256 of 1995/128 of 2000 by judgment and order dated 25.07.2001. The case of the Appellants is that on 06.01.1993 the accused persons attempted to oust the Complainant and his family members from his house and Appellant, Yogendra Das set on fire the north eastern portion of roof of house causing damage to the tune of Rs. 5,000/- to the Complainant. The accused persons also assaulted him and thereafter fled away. The reason for the occurrence was that the P.O. land had been acquired by Jag Mohan Baitha grandfather of the Complainant about 20 years back from Mahanth Ramautar Das through a written "Ekrarnama" but the Appellants were demanding the same and were attempting to dispossess him from the land.

2. It appears that the Complainant had gone to the Police Station but the Police did not lodge his report so he filed Complaint before the Court which was

dismissed u/s 203 Cr.P.C. but in Revision the matter was remanded to the Magistrate thereafter the case proceeded.

3. It appears that the prosecution examined seven witnesses. P.W. 6, Kamrul Ansari, P.W. 7, Nagendra Yadav are formal in nature.

4. P.W. 1, Ganesh Mahto stated that when he was at his home at about 6 P.M. he suddenly heard some noise upon which he went to the place of occurrence and saw part of the occurrence and extinguished the fire. He was told by Chandeshwar Baitha, the Complainant about the participation of the Appellants in committing the said act.

5. P.W. 2, Shankar Das also stated that while he was returning to his village he saw the Appellants assaulting the Complainant and setting his house on fire.

6. P.W. 3, Sukeshwar Mahto stated that he went to the place of occurrence on hearing an alarm and saw the Appellants setting fire to the house of the Complainant. He, however, did not state about any assault having been made upon the Complainant.

7. P.W. 4, Harendra Baitha is the brother of the Complainant who stated that on an alarm he rushed towards his brother's house and saw the Appellants assaulting him and also setting his house on fire.

8. P.W. 5, Chandeshwar Baitha is the Complainant himself. He repeated his version in the Complaint and that after the Appellants refused to register his case he had filed the present Complaint.

9. The submission of Counsel for the Appellants is that admittedly there is land dispute between the parties. Moreover, the major part of prosecution case has been disbelieved and the Appellants have been acquitted of the charge u/s 436 IPC which was inextricably woven into the prosecution case. In such circumstances to hold the Appellants guilty u/s 323 IPC even while the prosecution witnesses have taken extreme steps to rope in the Appellants by deposing falsely the case is fit to be rejected as a whole.

10. I am inclined to accept the said submission of the Appellants. Hence, the appeal is allowed and the order of conviction and sentence passed against the Appellants on 25.07.2001 by the 4th Additional Sessions Judge-Sitamarhi in S.Tr. No. 256 of 1995/128 of 2000 is set aside. The Appellants re discharged of the liability of their bail bonds.