

(2021) 08 JH CK 0022
In the Jharkhand High Court
Case No : Criminal Revision No. 1087 Of 2013

Md. Razi And Others	Vs	APPELLANT
State Of Jharkhand And Others		RESPONDENT

Date of Decision : 09-08-2021

Acts Referred:

Indian Penal Code, 1860 — Section 120B, 147, 148, 323, 337, 379, 380, 384, 385, 447, 448, 452
Probation Of Offenders Act, 1907 — Section 3, 4
Code Of Criminal Procedure, 1973 — Section 144, 156(3), 313

Citation : (2021) 08 JH CK 0022

Hon'ble Judges : Anubha Rawat Choudhary, J

Bench : Single Bench

Advocate : Anil Kumar, Chandana Kumari, Tapas Roy

Final Decision : Disposed Of

Judgement

Anubha Rawat Choudhary, J

1. Heard Mr. Anil Kumar, the learned Senior counsel appearing on behalf of the petitioner assisted by Ms. Chandana Kumari, Advocate.

2. Heard Mr. Tapas Roy, the learned A.P.P. appearing on behalf of the State.

3. The present criminal revision petition is directed against the Judgment dated 07.10.2013 passed by the learned Principal Sessions Judge, Dumka in

Criminal Appeal No. 70 of 2011 whereby and whereunder the learned appellate court confirmed the conviction and sentences of the petitioners under

Sections 148, 323, 447 and 385 of the Indian Penal Code passed by the learned trial court, but acquitted them from the charge under Section 379 of

the Indian Penal Code and dismissed the criminal appeal with modification.

4. The learned trial court vide Judgment of conviction and the order of sentence

dated 17.12.2011 passed by the learned Chief Judicial Magistrate, Dumka in P.C.R. Case No. 51 of 2005 / T.R. Case No. 651 of 2011 had convicted the petitioners under Sections 148, 323, 447, 379 and 385 of the Indian Penal Code and had sentenced them to undergo Simple Imprisonment for 03 months each for the offence under Section 447 of the Indian Penal Code, 6-6 months each for the offence under Section 148 and 323 of the Indian Penal Code and 1-1 year each for the offence under Section 379 and 385 of the Indian Penal Code and had directed that all the sentences will run concurrently.

Arguments on behalf of the petitioners

5. Learned Senior counsel appearing for the petitioner while advancing his arguments submitted that the petitioners were convicted and sentenced under Sections 148, 323, 447, 379 and 385 of the Indian Penal Code by the learned trial court and the learned appellate court has confirmed their conviction and sentence under Sections 148, 323, 447 and 385 of the Indian Penal Code and has acquitted them from the charge under Section 379 of the Indian Penal Code.

6. Learned Senior counsel submitted that the exhibits which were filed by the Complainant regarding the sale deed and title suit are subject matter of second appeal pending before this Court and there is land dispute between the complainant and the present petitioners. Learned Senior counsel further submitted that as per the evidence of P.W.-2, some construction work was going on in the house for which he was bringing mud on the spot, but it cannot be said that the complainant was living in the said house. Learned Senior counsel also submitted that the complaint was filed without any appropriate affidavit and which is contrary to the law laid down by the Honâ??ble Supreme Court in the case of â??Priyanka Srivastava and Another vs. State of Uttar Pradesh and Othersâ?? reported in (2015) 6 SCC 287.

7. Learned Senior counsel further submitted that so far as offence under Section 323 of the Indian Penal Code is concerned, there is no medical report or injury report on record and there is no evidence that the hurt was caused by assault and accordingly, the basic ingredient for offence under Section 323 of the Indian Penal Code is not satisfied.

8. However, the learned Senior counsel also submitted that considering the nature of dispute between the parties and the fact that the present offence

is the first offence of the petitioners, the learned courts below ought to have considered to give the relief under Section 3/4 of the Probation of

Offenders Act to the petitioners and this aspect of the matter has not been properly considered by the learned courts below. Learned Senior counsel

further submitted that the petitioners had surrendered on 07.12.2013 and they were granted bail by this Court vide order dated 13.12.2013 and their

bail bonds were accepted on 17.12.2013 by the learned trial court and as such, the petitioners have remained in custody for 11 days during the

pendency of this case. Considering the aforesaid aspects of the case, the sentences of the petitioners may be modified to some extent by imposing

finer.

Arguments on behalf of the Opposite Party-State

9. Learned A.P.P. appearing on behalf of the Opposite Party-State opposed the prayer and submitted that the allegation regarding assault has been

specifically made by the complainant of the case which has been corroborated by the independent witness P.W.-2. Learned A.P.P. also submitted

that merely because there is land dispute, the same does not mean that no criminality is involved in the case. Learned A.P.P. further submitted that

there are concurrent findings recorded by the learned courts below which do not call for any interference in revisional jurisdiction.

Findings of this Court

10. After hearing the learned counsel for the parties and going through the impugned judgments and the lower court records of the case, this Court

finds that the prosecution case is based on the Complaint being P.C.R. Case No.51/2005 presented on 28.01.2005 alleging inter-alia that the father of

the Complainant Late Ram Briksh Sah had purchased 1 bigha land in Mouza Naya Dumka bearing Plot No.29 of Jamabandi No.57/2001 vide a

registered Sale Deed No.3241 dated 28.10.1980 and had got his name mutated by the order of Circle Officer, Dumka in Mutation Case No.67/95-96

and had been paying rent for the said land regularly and had come in possession over the disputed land from the date of purchase and had also got a

map sanctioned from Dumka Municipality in the year 1981 on payment of the cost of sanction of Rs.10/-. It was further alleged that in the year 1981,

his father constructed a small temporary hut for the purpose of living temporarily with his family members and also for giving shelter to the labourers

who were engaged in making the house. As soon as the hut was constructed, the relative of the accused persons wanted to grab the land and thus, a

proceeding under Section 144 of Cr.P.C. was initiated by the S.D.M., Dumka on 27.07.1989. It was further alleged that on 27.01.2005, the

Complainant went to the place of occurrence land for constructing his house as per the map granted by the Dumka Municipality and as soon as the

Complainant just lay out of foundation for pucca house, the accused persons came there armed with deadly weapon and made obstruction and forcibly

took away the household articles and materials of construction worth Rs.50,000/- from the place of occurrence. When the Complainant and his family

members protested, the accused persons assaulted the Complainant by fists and slaps. It was further alleged that the accused persons asked the

Complainant to vacate the hut and advised the Complainant to execute a sale deed of the place of occurrence land in their favour at a very low price.

The Complainant went to Dumka (T) police station, but his case was not registered and then the Complainant filed the present complaint case on the next day.

11. After enquiry, a prima facie case for the same offences was found to be made out against the petitioners and summons was issued to them. After

appearance of the petitioners, the case was fixed for evidence before charge and the Complainant examined himself and produced his witnesses as

evidence before charge.

12. The charges under Sections 148, 447, 323, 379 and 385 of the Indian Penal Code were framed against the petitioners which were read over and

explained to them in Hindi to which they pleaded not guilty and claimed to be tried.

13. In course of trial, the Complainant examined altogether four witnesses in supported of his case. P.W.-1 is Om Prakash Sah who is the son of the

Complainant, P.W.-2 is Manoj Mahto who is an independent witness, P.W.-3 is Rameshwar Pd. Sah who is the Complainant himself and P.W.-4 is

Ashok Pd. Sah who is the brother of the Complainant. On behalf of the Complainant, the certified copy of Judgment passed in Title Suit No.66/2005

by the learned Sub-Judge-I, Dumka was exhibited as Exhibit-1 and the certified copy of judgment passed in Title Appeal No.8/2008 by the learned

District Judge, Dumka was exhibited as Exhibit-2.

14. The statements of the petitioners were recorded under Section 313 of Cr.P.C. wherein they denied the incriminating evidences put to them and

claimed to be innocent. The petitioners examined two witnesses in their defence. D.W.-1 is Basudeo Pal and D.W.-2 is Sobha Devi.

15. The learned trial court considered the oral and documentary evidences adduced on behalf of the parties and recorded its findings in Para-8 and 9

which read as under:

8.

It appears from the Exbt.1 the judgment dt. 29.03.2009 passed by the court of Sub Judge-I, Dumka in Title Suit No.66/05 Rameshwar Pd.

Sah and others Vrs. Razi and others that in that case plot no.9 Jamabandi no.6 area one bigha under ward no.5, Dumka Municipality

which is the land in this instant criminal case as place of occurrence was involved and the suit was decreed in favour of the complainant

and the same decree was upheld by the court of District Judge, Dumka through judgment dt. 30.04.2009 passed in Title Appeal No. 8/08

(Exbt.2). So far the documentary evidence available on record, it is clear that the place of occurrence involved in this case belongs to the

complainant. In the judgment (Exbt.1), it has been also mentioned about the proceeding between the parties U/s 144 Cr.P.C. which was

against the accused persons and in favour of the complainant. Continuous fighting of the accused persons with the complainant for the

land in occurrence shows is high handedness of the accused persons with the complainant. And due to this, the preponderance of the

probability goes in favour of the complainant and against the accused persons. No doubt, P.W.-1 is the son of the complainant, P.W.-3

Rameshwar Pd. Sah is the complainant himself and P.W.-4 Ashok Pd. Sah is the younger brother of the complainant and they may be said

the interested witness of this case but they have consistently proved the case of the complainant on the point of criminal trespass, assault by

making unlawful assembly armed with deadly weapon, theft and giving fear of extortion. Some minor contradiction in the statement of the

witnesses is always possible. Nobody can say about the occurrence in photographic manner after long span of time. The case of the

complainant is supported with an independent witness P.W.-2 Manoj Mahto.

Though, he has not taken the name of any of the accused persons but he claimed to identify the accused persons present in the occurrence which has not been objected by the defence. The witnesses have been cross-examined at length but nothing has been elicited to render their testimony unreliable. For proving allegation of theft no need to prove any recovery of theft articles from the possession of the accused persons. It has come in the evidence that the complainant was put in fear of injury in order to commit extortion like to sell the land in occurrence to the accused persons at rate of 1,000/- per Katha and in that course the assault and theft was committed with the complainant by the accused persons. So, the section 379 and 385 I.P.C. is clearly made out against the accused persons and the witnesses have consistently stated about the said occurrence.

9. Having regard to the fact and circumstances discussed above, I am of the opinion and it is held that the prosecution has been able to prove its case of rioting armed with deadly weapon, criminal trespass, assault, theft and put in fear of injury in order to commit extortion against the accused persons beyond all reasonable shadow of doubt and to the hilt.â??

16. The learned trial court convicted the petitioners under Sections 148, 323, 447, 379 and 385 of the Indian Penal Code and sentenced them accordingly.

17. The learned appellate court also considered the evidences adduced on behalf of the parties and the arguments advanced on behalf of them and recorded its findings in Para-9 and 10 which read as under:

â??9. Evaluating the oral and documentary evidence adduced by the parties carefully, I find that Ext.1 is the certified copy of judgment passed in title suit no.66/05 and it shows that complainant had filed a title suit against the accused persons for the declaration of their right, title and interest over the P.O. land and also for the recovery of possession on the same, and learned Sub Judge-I, Dumka has decreed the suit vide order dated 29.3.08 and that present suit has been filed by the complainant in year, 2005 after the date of occurrence of present complainant case. Ext.2 is the certified copy of judgment passed in Title Appeal no.8/08 in the court of District Judge, Dumka and it shows

that the impugned judgment and decree passed by Sub Judge-I, Dumka in title suit no.66/05 (Ext.1) was confirmed and it was upheld. From

the case record, I find that the appellants have not filed any document to show that they have filed any appeal against the order of District

Judge, Dumka in Title Appeal No.8/08 before the Honâ??ble High Court, and in the memo of appeal, they have not mentioned this fact,

and defence has also not mentioned and pleaded that they have complied with the order of Sub Judge-I, Dumka or District Judge, Dumka

passed in civil cases. Hence this circumstance clearly indicates that the order of Sub Judge-I, Dumka is still enforce and binding on both

parties.

The defence has given must stress on the document which is marked as Ext.A. Ext.A is the information granted by Dumka Municipality under

R.T.I. Act, and in this letter Dumka Municipality has stated that as per the record of the office, there is no any house of complainant on the

place of occurrence, and the map is not being sanctioned by his office for the construction of house within Dumka Municipality. But this

information does not indicate that the house of appellants / accused persons are on the place of occurrence. It is fact that the

complainant/respondent is claiming that his father has constructed a hutment on the place of occurrence in the year, 1981, and on the

contrary the appellants have claimed that their father has constructed a hutment on the place of occurrence in the year, 1972 and since

then they are living therein with their family members as it appears from the written statement of appellants filed in Title Suit No.66/05. And

hence they have perfected and acquired the adverse possession over the same. But the appellants have not filed any document such as

electric bill, municipal tax, rent receipt etc. to show that they have constructed the P.O. house and are living therein since 1972. On this

score the learned Sub Judge-I, Dumka and District Judge, Dumka have already given finding that appellants have not acquired any valid

right, title interest and adverse possession over the suit land and house. And hence the claim of the appellants over the P.O. land and house

appears to me not bonafide and sustainable.

10. From the oral evidence of complainant and his witnesses I find that P.W.-1 is

the son of complainant, P.W.-3 is the complainant himself, P.W.-4 is the brother of complainant, and they have supported the case of complainant in their evidence though they are the complainant himself and interested witness being the family members of complainant, but their evidence appears to me reliable one and without any significant contradiction and discrepancies. From the evidence of P.W.-2 I find that he is an independent witness and has supported the prosecution case as an eye witness to the said occurrence. This witness cannot say about the number of rooms of P.O. house, but such fact only does not falsify the whole occurrence and his reliableness. From the evidence of complainant himself it appears that there was only hutment on the place of occurrence without any latrine and bathroom, and he used to live therein of and on. From the oral evidence of defence witnesses, I find that both have stated that the appellants are living in the P.O. house with his family members for the last 30 years and they have not seen the document with regard to the P.O. land. But on this score, I find that if the appellants would have living in the said P.O. house from before the said occurrence for the last 30 years, they must have some document in this regard which might prove the claim of defence, and none of the appellants came forward to give his evidence in support of their claim. In this way, I find that the complainant and his witnesses have supported and corroborated to the fact that on the date of occurrence appellants came to the place of occurrence armed with deadly weapon being the member of unlawful assembly and has committed rioting and has trespassed in the P.O. house, and they have put the complainant in fear of injury in order to sale the P.O. land to them at a very cheap rate of Rs.1000/- per Katha and when the complainant refused he was assaulted by the accused persons. And thus, the complainant has been able to prove and corroborate the offence for the charges u/s 148, 323, 447, 385 of the I.P.C. beyond any reasonable doubt, and appellants were rightly convicted there under. With regard to charge under section 379 of the IPC, I find that the complainant and his witnesses have given different versions on the manner and factum of theft. And thus in my view, the complainant

has not been able to prove the offence of theft against the accused persons beyond reasonable doubt. And hence the appellants are

acquitted for the charge u/s 379 of the IPC.â??

18. The learned appellate court confirmed the conviction and sentences of the petitioners under Sections 148, 323, 447 and 385 of the Indian Penal

Code, but acquitted them from the charge under Section 379 of the Indian Penal Code and dismissed the criminal appeal with modification.

19. This Court finds that there are concurrent findings based on materials on record that the father of the Complainant had purchased the place of

occurrence land in the year 1980 by a registered sale deed and on the date of occurrence, he was constructing a pucca house on the place of

occurrence and the accused persons came there armed with deadly weapon and obstructed him from making any construction and insisted him to sell

the said land in their favour at the rate of Rs.1,000/-per Katha. When the Complainant did not agree the accused persons assaulted him. In cross-

examination, he has stated that Sheikh Bablu had assaulted him by lathi on his back and the doctor had treated him. He had also sustained stone injury

on his back, but he cannot say who had given the stone blow. Subsequently, he stated that he had not gone to the doctor and he was not given any

medicine for the injuries. He further stated that the witnesses were present at the place of occurrence and had seen the occurrence.

20. It is not in dispute that there has been civil suit between the parties which was ultimately decided in favour of the complainant party and it has

been submitted by the learned counsel for the appellants that a second appeal in connection with the place of occurrence is pending before this court.

This Court is of the considered view that pendency of the second appeal, if any, before this Court in connection with the place of occurrence land has

no bearing in this case as there is concurrent evidence on record that the complainant was in possession of the place of occurrence land and the

petitioners were the aggressors who have committed the aforesaid offence. This Court is of the considered view that merely because there is land

dispute between the parties, the conviction of the petitioners cannot be interfered.

21. This Court finds that the basic ingredients of the offence punishable under Section 148, 323, 447 and 385 of the Indian Penal Code have been duly

proved by the prosecution to sustain the conviction of the petitioners. This Court is also of the considered view that merely because there is no injury

report on record, this by itself does not make the conviction of the petitioners for offence under Section 323 of the Indian Penal Code unsustainable.

There are cogent and consistent materials on record as considered by the learned courts below to sustain the conviction of the petitioners under

Section 323 of the Indian Penal Code also.

22. This Court further finds that the complainant, P.W.-3 has fully supported his case; P.W.-1 and P.W.-4 who are the son and brother of the

Complainant respectively have fully supported and corroborated the facts and evidence of the Complainant and P.W.-2 who is an independent eye

witness has also supported the occurrence.

23. This Court is of the view that there is no scope for re-appreciation of evidences calling for interference in revisional jurisdiction and the

contradictions appearing in the evidences of the prosecution witnesses are not material contradictions to draw any conclusion of illegality or perversity

in the impugned judgments. Accordingly, the conviction of the petitioners under Sections 148, 323, 447 and 385 of the Indian Penal Code passed by the

learned trial court and confirmed by the learned appellate court is upheld.

24. The learned counsel for the petitioners has relied upon the judgement passed by the Honâ??ble Supreme Court reported in (2015) 6 SCC 287

(Priyanka Srivastava And Another vs. State of Uttar Pradesh and Others) to submit that the complaint was not filed on affidavit and accordingly, the

entire proceeding was vitiated.

25. This Court finds that the said judgement does not help the petitioners in any manner. The instant case was instituted on the basis of a complaint

filed by the complainant on 28.01.2005 for the alleged offences under Sections 147, 148, 448, 452, 323, 380, 384 and 120B of Indian Penal Code with a

prayer before the learned court below to consider the facts mentioned in the complaint petition and after enquiry be pleased to take cognizance of the

offence against the accused persons and issue summons against them to put them to trial in the court and punish them according to law.

26. The complainant was examined on solemn affirmation on 01.02.2005 and thereafter, the case was made over to the Magistrate and on 10.02.2005

and on 05.03.2005, one witness was examined by the learned court below and

on 20.04.2005, third witness was examined before the learned court below. Certain documents were also filed before the learned court below on 09.05.2005 and ultimately, the learned Judicial Magistrate, Ist Class, vide order dated 24.05.2005, took cognizance of the offence considering the materials produced during enquiry and the complainant was directed to file requisite and process. Consequently, summons was issued. This Court finds that the complainant neither made a prayer for referring the matter to the police for investigation under Section 156(3) of Cr.P.C., nor the case was made over to police for investigation, rather the enquiry for the purpose of issuance of summons was conducted by the Judicial Magistrate himself and upon being satisfied, cognizance was taken. Accordingly, this Court is of the considered view that the judgement passed by the Honâ??ble Supreme Court in the case of Priyanka Srivastava (Supra) does not apply to the facts and circumstances of this case wherein it was held that remedy available under section 156(3) of Cr.P.C is not of routine and exercise of such power requires application of judicial mind and it was then made mandatory for a Section 156(3) application to be supported by an affidavit. Additionally, the present case was filed and decided much prior to decision in the case of Priyanka Srivastava (Supra).

27. So far as the sentences of the petitioners are concerned, this Court finds that both the parties were in litigating terms with regard to the place of occurrence land and the occurrence had arisen out of land dispute between them and the occurrence is of the year 2005 and the petitioners have faced the rigours of the trial for more than 16 years and they have no criminal antecedent.

28. Considering the aforesaid circumstances and also the facts that the petitioners have remained in judicial custody for some period during pendency of this criminal revision and that the Petitioner Nos. 1, 2, 3, 4, 5 and 6 were aged about 44, 45, 40, 39, 32 and 43 years respectively on the date of their conviction on 17.12.2011 as per the trial courtâ??s judgment and accordingly, presently they are aged about 53, 54, 49, 48, 41 and 52 years respectively, this Court is of the view that ends of justice would be served, if the sentences of the petitioners are modified and reduced to the period already undergone by them in judicial custody coupled with imposing fines.

29. Accordingly, the sentences of the petitioners for the offence under Section

447 of the Indian Penal Code are modified and reduced to the period already undergone by them in judicial custody with fine of Rs.500/- each; their sentences for the offence under Section 323 of the Indian Penal Code are modified and reduced to the period already undergone by them in judicial custody with fine of Rs.500/-each; their sentences for the offence under Section 148 of the Indian Penal Code are modified and reduced to the period already undergone by them in judicial custody with fine of Rs.2,000/- each and their sentences for the offence under Section 385 of the Indian Penal Code are modified and reduced to the period already undergone by them in judicial custody with fine of Rs.2,000/-each.

30. The aforesaid total fine amount of Rs.5,000/- each is directed to be deposited before the learned trial court within a period of two months from the date of communication of a copy of this order to the learned trial court and the fine amounts so deposited shall be remitted to the Complainant-victim of the case namely, Rameshwar Pd. Sah after due identification. In case the fine amounts are not deposited within the stipulated time frame, the learned court below shall cancel the bail bonds furnished by the petitioners and the petitioners would serve the sentences under Sections 148, 323, 447 and 385 of the Indian Penal Code as imposed by the learned trial court.

31. Accordingly, with the aforesaid findings and modification in sentences of the petitioners, the present criminal revision petition is hereby disposed of.

32. Pending interlocutory application, if any, is dismissed as not pressed.

33. Let the lower court records be sent back immediately to the court concerned.

34. Let a copy of this order be communicated to the learned court below through e-mail/FAX.