
(1985) 01 PAT CK 0038
In the Patna High Court
Case No : Criminal Appeal No. 144 of 1978

Prabhu Rai, and 5 Others

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 08-01-1985

Acts Referred:

Penal Code, 1860 (IPC) — Section 109, 323, 436

Citation : (1985) PLJR 341

Hon'ble Judges : Surendra Narain Jha, J

Bench : Single Bench

Advocate : Arun Kumar Singh, No. 2, for the Appellant; Bindhyachal Prasad (, Assistant Public Prosecutor), for the Respondent

Judgement

Surendra Narain Jha, J.—In this appeal, there are six appellants. Appellant No. 1 Prabhu Rai has been convicted u/s 436 of the Indian Penal Code (for short "the Penal Code") and sentenced to undergo rigorous imprisonment for five years. Appellant No. 2 Sheo Sharan Rai (actually, he is Deo Sharon Rai, but he has wrongly been described as Sheo Sharan Rai in the impugned judgment and accordingly in the memorandum of this appeal) has been convicted u/s 436 read with section 109 of the Penal Code and sentenced to undergo rigorous imprisonment for five years. Rest of the appellants, namely, Janki Rai (appellant No. 3), Ram Chandra Rai (appellant No. 4), Bharat Rai (appellant No. 5) and Dwarika Rai (appellant No. 6) have been convicted u/s 323 of the Penal Code and sentenced to undergo rigorous imprisonment for one year each. All the above six appellants have been further convicted u/s 147 of the Penal Code and sentenced to undergo rigorous imprisonment for two years. However, the sentences have been ordered to run concurrently. The prosecution case, according to the Fardbeyan of the informant Ramhit Rai (P.W. 2) is that he constructed his house on his land about 22 years ago and was residing there. According to the informant, his father Sheo Deni Rai (P.W. 4) and his brother Nathuni Rai (P.W. 3) had gone to Motihari on the date of occurrence i.e. 23.10.1972 to do some pairvi in a case in relation to the same land pending between him and appellant No. 1

Prabhu Rai. The informant was at his house along with his mother. The informant was sitting on his Machan after taking his meal. At about 11.30 P.M., he heard sound of some persons and then he came outside the house and saw these appellants, namely, Prabhu Rai, Deo Sharan Rai, Janki Rai, Ramchandra Rai, Sakhichand Rai, (since dead), Bharat Rai and Dwarika Rai armed with lathis. According to him, these appellants asked the informant to leave the house, but the informant said as to why he would leave the house and his mother Sheo Kumari (P.W. 5) also came out. His mother also said that they would not leave the house. Thereupon, Deo Sharan (appellant No. 2) ordered for assault and also ordered for setting fire to the house. In the meantime Janki Rai (appellant No. 3) assaulted him with the hurrah of the lathi on his eyebrow, which caused injury to him, and his mother was assaulted by Dwarika Rai (appellant No. 6) and Ramchandra Rai (Appellant No. 4) and Prabhu Rai (appellant No. 1) set fire to the house. On alarm raised by the informant and his mother a villager, Ram Dent Rai (not examined), the informant's father and brother Nathuni Rai and others came running and saw the occurrence. On the arrival of these persons, the appellants fled away towards their house. The articles in the house were also burnt. This Fardbeyan was recorded at about 5 P.M. on 24-10.72 by P.W. 6, the Assistant Sub-Inspector of Police, D.N. Singh, of Kotwa Outpost on his visit to the alleged place of occurrence. On this allegation, investigations was taken up and charge sheet was submitted in the case and the appellants were committed to the court of session for trial.

2. As it appears from the written statement filed on behalf of the appellants, the defence case is that the prosecution case is false and fabricated and they have been falsely roped in this case by the informant with a view to put undue pressure on them, so that they may be coerced, to give up their rightful claim over survey plot No. 1901 of Khata No. (28 which had been the sheet anchor of the dispute between the parties. It has also been asserted in the memorandum of appeal that prior to the alleged occurrence, appellant No. 1 Prabhu Rai instituted a criminal case bearing Tr. "

" against the present informant (P.W. 2), his father Sheodeni Rai (P.W. 4) and his brother Nathuni Rai (P.W. 3) in respect of the aforesaid disputed land under sections 143 and 447 of the Penal Code. In that case, the trial court held Sheodeni Rai (P.W. 4), Ramhit Rai, the informant (P.W. 2) and Nathuni Rai (P.W. 3) along with other three persons guilty under sections 143 and 447 of the Penal Code and they were accordingly convicted and sentenced to undergo rigorous imprisonment for two months each. On appeal by them, the case was remanded by the appellate court and again they were convicted. They again preferred an appeal before the Sessions Judge of Champaran (Motihari) vide Criminal Appeal No. 215 of 1972 in which their convictions under sections 143 and 447 of the Penal Code were upheld, but the period of sentence of two months" rigorous imprisonment was reduced to one month under both the counts, which were ordered to run concurrently.

3. According to appellant No. 1 Prabhu Rai, he has taken settlement of the disputed land from the ex-landlord long ago and he was in actual possession of the aforesaid land on the payment of rent to the Maliks concerned. It has been asserted in the memorandum of appeal that several suits were filed for rent in respect of the disputed land between appellant No. 1 and the ex-landlord and one matter came to this Court in Second Appeal No. 478 of 1954 in which the landlord was granted a money decree for arrears of rent against Prabha Rai (appellant No. 1).

4. The prosecution, in order to substantiate the charges against the appellants, has examined seven witnesses. Out of them, P.W. 2 is the informant, P.W. 3 is his brother, P.W. 4 is the father of the informant, P.W. 5 is the mother of the informant. P.W. 1 has been declared hostile. P.W. 6 is the Investigating Officer and P.W. 7 is a formal witness who has not said anything on the point of occurrence. On the other hand, the defence has also examined two witnesses on the point of possession of Prabhu Rai (appellant No. 1) over the disputed land on which the occurrence is said to have taken place.

5. The trial court, on consideration of the evidence, found and held that prosecution case in true and the charges had been satisfactorily proved against the accused persons, i.e. the appellants, and they were held guilty of the offences. The trial court, accordingly, sentenced the appellants as stated above. Hence, this appeal.

6. Learned counsel appearing on behalf of the appellants submitted that all the documents regarding possession over the land and other documents which have been filed by the appellants in this case, have not at all been considered by the trial court while recording the finding of possession over the disputed land in favour of the prosecution. During the course of his argument, he drew my attention to Ext. A/a, which is the certified copy of the judgment of Tr. No. "

" in which the present informant (P.W. 2) his father Sheodeni Rai (P.W. 4) and his brother Nathuni Rai (P.W. 3) along with others have been convicted. In that judgment, the trial court has held as follows--

Thus from the perusal of the evidence adduced by the prosecution and the defence and also from the papers filed by them, I am of opinion that the accused formed an unlawful assembly and trespassed over the land of the complainant as alleged and I hold the five accused Sheodeni Rai, Punyadeo Rai, Ramdeni Rai, Ramhit Rai and Nathuni Rai guilty u/s 143/ 447 I.P.C.

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It is relevant to note here that Ramhit Rai is the informant in this case and this occurrence is also said to have taken place on the same land on which they were declared to be trespassers and were convicted by the trial court, which was upheld by the appellate court in Criminal Appeal No. 215 of 1972, as stated earlier.

7. From a perusal of the impugned judgment, I find that the trial court has not at all considered all these documents while convicting these appellants. He has considered only the oral evidence. Let me, therefore, examine the oral evidence adduced in this case to see as to whether the prosecution has been also to substantiate the charges levelled against these appellants. From the first information report, it appears that while the informant (P.W. 2) was sitting on his Machan at about 11.30 in the night, he saw these appellants armed with lathis coming to him and asking him to leave the house. His mother also came out and on their refusal, Deosharan (appellant No. 2) ordered to assault them and to set fire to the house and, accordingly, Prabhu Rai (appellant No. 1) set fire to his house and other appellants assaulted them with lathis. On there hulla, Ramdeni, a co-villager, informant's father (P.W. 4) and his brother (P.W. 3) and other came running there and saw the occurrence. I find that Ramdeni, who is said to have reached the place of occurrence on hulla, has not been examined by the prosecution; why there is no explanation to this effect. Learned counsel for the appellants also contended that not even a single villager who is supposed to have assembled on the place of occurrence at the time of setting fire has been examined in support of the prosecution version of the occurrence, therefore, in that view of the matter, the prosecution has not been able to prove its case beyond reasonable doubts. According to him, P.W. 2 is the informant himself, P.W. 3 is his brother, P.W. 4 is his father and P.W. 5 is his mother. There fore, the members of the same family have made incorrect statements in order to put undue pressure on appellant No. 1 Prabhu Rai, who is said to be in possession of the disputed land.

8. As I have already stated above P.W. 1 who is a co-villager has also been declared hostile. Therefore, it is not safe to rely on his evidence. The learned trial court has relied on his evidence and observed in the impugned judgment that from the evidence of P.W. 1 it appeared to him that on the date of occurrence the house of the informant (P.W. 2) was standing on the land, which is the place of occurrence. it has also observed that it appears that appellant No. 1 Prabhu Rai had taken possession of the land after the alleged occurrence. I may point out here that it is not safe to rely upon the evidence of a witness, who has been declared hostile, unless if it corroborated by a very reliable evidence. It is well settled that by declaring a witness hostile, the prosecution exhibits its intention not to rely on his evidence. So, his version cannot be treated as the version of the prosecution. So far as P.W. 2, 3, 4 and 5 are concerned, they are the members of the same family. Learned counsel seriously argued that not even one independent witness has been examined in this case and the evidence of these witnesses should not be treated as gospel truth. I have examined the evidence of all these witnesses. I find that no independent witness has been examined in this case. Even P.W. 1 who was an outsider, has been declared hostile by the prosecution. The learned trial court has dealt with the evidence of P.Ws. 2, 3, 4 and 5 and has come to the conclusion that the prosecution has been able to prove its case. It may be relevant to mention here that in the first information

report, it was stated by the informant that on the date of occurrence, his father (P.W. 4) and his brother (P.W. 3) had gone to Motihari to do some pairvi in a case in relation to the same land and the informant was at his house along with his mother. I fail to understand how then P.Ws. 3 and 4, who were not present on that date, have supported the prosecution version. In my view court have to be careful when dealing with the oral evidence given by the members of the same family i.e. interested or partisan witnesses and to avoid acting upon such testimony which may result in miscarriage of justice. Sometimes, it is found that interested witnesses have a tendency to exaggerate things. In assessing the evidence of interested or partisan witnesses, the court must be careful.

9. P.W. 6 is the Investigating Officer, who has, no doubt, found some burnt articles at the place of occurrence, but I have to see whether these appellants are responsible for the burning. I do not find any cogent or reliable evidence to hold that appellant No. 1 Prabhu Rai, on the orders of Deosharan Rai, burnt the house. On the evidence available on the record, it is difficult to hold that the prosecution has been able to substantiate the charge of arson against Prabhu Rai, appellant No. 1 or Deosharan Rai, appellant No. P.W. 7 has proved some rent receipts. A suggestion was given to him that the land in question is in possession of the appellants, but he has denied this suggestion. He has not stated anything on the point of assault or arson.

10. I have already stated above that many documents were filed by the appellants in order to show that the land in question was in their possession since long ago. Several cases were fought between the parties in respect of this land. Ext. A/a shows that Prabhu Rai filed a case against the informant and his father and brother which resulted in their conviction under sections 143 and 447 of the Penal Code. The instant case seems to have been filed just after three weeks of the said order of conviction. All these facts creates grave doubts in my mind if at all the informant was in possession of the land in question. As I am sitting in criminal appeal, I cannot express any view on the title of the disputed land, I have only to see whether the prosecution has proved its case to its hilt. If the evidence available on the records justifies a finding in favour of the accused, in my view, the accused is entitled to acquittal. Having considered the evidence, facts and circumstances of this case very closely, I am of the opinion that the prosecution has not been able to prove the charges levelled against the appellant beyond reasonable doubts. In the result, the appeal is allowed, the convictions and sentences awarded to these appellants by the impugned judgment are hereby set aside, and they are accordingly acquitted. They are discharged from the liabilities of their bail-bonds.