

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.639 of 2013

Arising Out of PS. Case No.-165 Year-2006 Thana- KUCHAIKOTE District- Gopalganj

1. Ramdeni Kushwaha and Anr S/o Late Timal Kushwaha Resident of Village- Lalbegi, Koiri Tola, Police Station- Kuchaikote, District- Gopalganj
2. Ramesh Kushwaha S/o Ramdeni Kushwaha Resident of Village- Lalbegi, Koiri Tola, Police Station- Kuchaikote, District- Gopalganj

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Lokesh Kumar Singh, Advocate
For the Respondent/s : Mr. Zeyaul Hoda, APP

CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL ORDER

4 25-04-2024 Heard Mr. Lokesh Kumar Singh, learned counsel for the appellants and Mr. Zeyaul Hoda, learned APP for the State.

2. The present appeal has been filed against the order dated 25.07.2013 and 29.07.2013 passed in Sessions Trial No. 363 of 2009/25 of 2013 passed by Shri Nand Lal Prasad, IV Additional Sessions Judge, Gopalganj by which the appellants have been found guilty for the offences under Sections 341, 323 and 325 of the Indian Penal Code but the learned Court below instead of passing any sentence, they have been ordered to be released on execution of probation bond of Rs. 2,000/- with one sureties of the like amount each to be of good behaviour and to maintain peace for a period of one year under Section 4 of the



Probation of Offenders Act.

3. According to prosecution case, due to petty dispute regarding a pathway, both the appellants have abused and assaulted the informant by means of *farsa* and *lathi* due to which the informant sustained severe injuries and also took Rs. 5,000/- cash and wrist watch of the informant.

4. The appellants were also charged for the offences under Sections 447, 504 and 308 of the Indian Penal Code but they were acquitted of all these charges. The prosecution has examined altogether 7 witnesses to prove his case but out of them P.W.4 and P.W.5 have not supported the prosecution case and have been declared hostile.

5. Learned counsel for the appellants submits that P.W.1 is Ram Naresh Sah, P.W.2 is Manju Devi, P.W.3 is the informant/injured Jitendra Prasad, P.W.4 and P.W.5 have been stated hostile. P.W.6 is Dr. Sachidanand Singh who has examined the informant and P.W.7 is a formal witness who has proved the writing and signature of S.I. on the First Information Report.

6. On behalf of the defence only one witness has been examined and he has categorically stated that there was a dispute between the parties with respect to the pathway and



thereafter there was a panchayati between the parties but the learned Court below has not considered the statement of the defence witness.

7. Learned counsel for the appellants submits that no independent witness has come to support the case of the prosecution and apart from that the learned Court below have disbelieved the major part of the occurrence by acquitting the appellants for the offences under Sections 308, 447 and 504 of the Indian Penal Code and apart from that the learned Court below has not examined the investigating officer which highly prejudiced the defence case. The major contradictions in the evidence of the eye witnesses could not be brought on record in absence of the investigating officer and the impugned judgment is dependent upon the testimony of the interested witnesses and the learned Court below has also failed to appreciate that there is case and counter case between the parties and both the sides have sustained injuries.

8. In this context, it is pertinent to appreciate the scheme of the Probation of Offender Act, 1958. Section 3 of the act confers power on the Court to release certain offenders after admonition. The said provision is quoted hereinbelow;

“3. Power of court to release certain offenders after admonition.—When any person is found guilty of having committed



an offence punishable under section 379 or section 380 or section 381 or section 404 or section 420 of the Indian Penal Code, (45 of 1860) or any offence punishable with imprisonment for not more than two years, or with fine, or with both, under the Indian Penal Code or any other law, and no previous conviction is proved against him and the court by which the person is found guilty is of opinion that, having regard to the circumstances of the case including the nature of the offence, and the character of the offender, it is expedient so to do, then, notwithstanding anything contained in any other law for the time being in force, the court may, instead of sentencing him to any punishment or releasing him on probation of good conduct under section 4, release him after due admonition.”

9. Section 4 of the Probation of Offender Act, 1958

deals with the power of the Court to release certain offenders on probation on good conduct. The said provision is quoted hereinbelow;

“4. Power of court to release certain offenders on probation of good conduct.—
(1) When any person is found guilty of having committed an offence not punishable with death or imprisonment for life and the court by which the person is found guilty is of opinion that, having regard to the circumstances of the case including the nature of the offence and the character of the offender, it is expedient to release him on probation of good conduct, then, notwithstanding anything contained in any other law for the time being in force, the court may, instead of sentencing him at once to any punishment direct that he be released on his entering into a bond, with or without sureties, to appear and receive sentence when called upon during such period, not exceeding three years, as the court may direct, and in the meantime to keep the peace and be of good behaviour: Provided that the court shall not direct such release of an offender unless it is satisfied that the



offender or his surety, if any, has a fixed place of abode or regular occupation in the place over which the court exercises jurisdiction or in which the offender is likely to live during the period for which he enters into the bond.

(2) Before making any order under sub-section (1), the court shall take into consideration the report, if any, of the probation officer concerned in relation to the case.

(3) When an order under sub-section (1) is made, the court may, if it is of opinion that in the interests of the offender and of the public it is expedient so to do, in addition pass a supervision order directing that the offender shall remain under the supervision of a probation officer named in the order during such period, not being less than one year, as may be specified therein, and may in such supervision order impose such conditions as it deems necessary for the due supervision of the offender.

(4) The court making a supervision order under sub-section (3) shall require the offender, before he is released, to enter into a bond, with or without sureties, to observe the conditions specified in such order and such additional conditions with respect to residence, abstention from intoxicants or any other matter as the court may, having regard to the particular circumstances, consider fit to impose for preventing a repetition of the same offence or a commission of other offences by the offender.

(5) The court making a supervision order under sub-section (3) shall explain to the offender the terms and conditions of the order and shall forthwith furnish one copy of the supervision order to each of the offenders, the sureties, if any, and the probation officer concerned.”

10. Learned counsel appearing on behalf of the State submits that the impugned order is passed in accordance with the law and after due consideration, the learned Court below has



been pleased to release the appellants on execution of probation bond of Rs. 2,000/- and the learned Court below has not passed any sentence against these appellants.

11. Learned counsel for the appellants has filed supplementary affidavit stating therein that after passing of the impugned order the appellants are not involved in any criminal cases and due to passage of time a good sense has prevailed among the parties and now there is no bitterness or dispute between the parties.

12. It appears from the supplementary affidavit filed on behalf of the appellants that the appellants are not involved in any other criminal cases after the passing of the impugned order and they are maintaining peace.

13. Accordingly, order dated 25.07.2013 and 29.07.2013 are set aside and the appeal stands allowed.

(Rajesh Kumar Verma, J)

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