
(1913) 11 CAL CK 0001
In the Calcutta High Court

Araz Sarkar and Others

APPELLANT

Vs

Emperor on The Prosecution of Abdul Sarkar

RESPONDENT

Date of Decision : 26-11-1913

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 106, 144

Citation : 24 Ind. Cas. 561

Hon'ble Judges : Imam, J;Chapman, J

Bench : Division Bench

Judgement

1. The petitioners were convicted by the Deputy Magistrate of Tangail for an offence u/s 147, Indian Penal Code, and sentenced to 18 months" rigorous imprisonment each and bound down u/s 106, Criminal Procedure Code, for a period of two years to keep the peace. On appeal the learned Sessions Judge upheld the convictions and sentences. Against their convictions and sentences the petitioners moved this Court and obtained this Rule on the District Magistrate to show cause why the sentences passed on the petitioners should not be revised.

2. The occurrence in this case took place on a chur, called Bahuli's Chur, in the river Brahmaputra, locally called Jamna. The petitioners are the men of the zemindar who claims title to and possession over the land comprises in the chur. The party of the complainant stand on the side of the taluqdars who also claim possession over the land. On account of the dispute between the parties an order u/s 144, Criminal Procedure Code, was issued by the Magistrate directing the zemindar's party as well as the taluqdars" party not to go on the land. The injunction so issued was received by the zemindar's party with approval and they refrained from going on the land. The taluqdars" party, however, were dissatisfied with the order and the petitioners" case is that in spite of the injunction they attempted to go on the land and take possession. On behalf of the zemindar an application was made to the Magistrate setting out the charge of disobedience against the taluqdars" party and praying that the standing crops might be attached till the decision of the dispute between the parties.

Accordingly an attachment order was made and a Sub-Inspector of Police was deputed to effect the attachment. The petitioners representing the party of the zemindar accompanied the Sub-Inspector of Police and when they were engaged in pointing out the plots on which the crops stood, the party of the taluqdars appeared. Between the two parties there was some sort of a fight resulting in some slight injury to one of the complainant's, party and some injuries to two men on the side of the petitioners. At the trial the question was considered as to whether the party of the taluqdars were in possession or the party of the zemindar. , The Magistrate and the Sessions Judge came to the conclusion that the taluqdars were in possession. For the purpose of our revising the sentences passed on the petitioners the learned Counsel appearing on their behalf has placed before us a decision of the Settlement Court which was made after the decision of the appeal before the Sessions Judge. From the Settlement Officer's decision we gather that the zemindar was in possession of all culturable area of the chur. Regard being had to the finding of the Settlement Officer on the question of possession we are constrained to say that the petitioners, though they were not right in engaging in a fight with the taluqdars, yet had some justification on their side. The learned Judge has not come to any finding as to what had been done by the accused and to what extent they had been lawless. It is clear to our mind that the fight was not a premeditated one and were it not for the appearance of the taluqdars

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