

(1966) 09 PAT CK 0016
In the Patna High Court
Case No : Criminal Revision No. 594 of 1965

Babu Lal Sao and Others

APPELLANT

Vs

Sri Niwas Bajpai

RESPONDENT

Date of Decision : 01-09-1966

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 32
Penal Code, 1860 (IPC) — Section 379

Citation : AIR 1967 Patna 253 : (1967) CriLJ 1040

Hon'ble Judges : R.J. Bahadur, J

Bench : Single Bench

Advocate : J.K. Prasad No. 2, for the Appellant; K.P. Verma, for the Respondent

Final Decision : Dismissed

Judgement

R.J. Bahadur, J.—These nine petitioners have been convicted u/s 379, Indian Penal Code and sentenced to suffer rigorous imprisonment for six months. They have also been convicted u/s 143, Indian Penal Code, and sentenced to undergo rigorous imprisonment for one month. The sentences have been ordered to run concurrently.

2. The necessary facts for the present purposes are these: The petitioners are alleged to have gone to the land of the complainant. Sri Niwas Bajpai, covered by two plots, on 26-11-1959, with the object of culling away the standing paddy crops. It is said that they succeeded in cutting away the paddy crops of 10 kathas of land out of an area of about 3 bighas. It appears that in 1910, this land was sold in a rent decree and after purchase by some person, ultimately in 1924 the father of the complainant purchased this land from one Sudarshan Sao through a registered sale-deed. There was thereafter mutation of the name of the purchaser and complainant's father and thereafter the complainant paid rent to the landlord for this land. The complainant by virtue of title claimed to be in possession all along and alleged that the paddy crop standing on the land had been grown by him.

The ease of the accused, on the other hand, was amongst other, that half of the two plots was purchased from one Kamal Krishna Tewari who had title to this land and the title of the complainant was denied. The trial court has held that the land in question was in possession of the complainant and that he had raised the paddy crops and the accused persons forming an unlawful assembly had cut away the paddy crops on 10 kathas of land and had thus committed an offence punishable under Sections 143 and 379 of the Indian Penal Code. This finding has been affirmed by the lower appellate Court.

3. Appearing on behalf of the petitioners Mr. J.K. Prasad has argued that there is no finding of dishonest intention by the courts below. Learned Counsel's submission is that the courts below should have considered the petitioner's claim that they were acting in exercise of bona fide belief that they had title and possession over the land. There is no disagreement with this view of the law on behalf of the State. It is, therefore, unnecessary to deal with some decisions upon which learned counsel for the petitioners has relied. Learned Standing Counsel contends that essential condition is that there must be an assertion of claim of such right.

If such a claim were put forward, it was the duty of the courts below to examine this matter and give necessary finding. But no such claim appears to have been put forward. Mr. J.K. Prasad has contended that the trend of cross-examination of the prosecution witnesses would show that such a claim was put forward. In order to appreciate his contention, I have looked into the written statement filed on behalf of the accused persons as also the statements of the accused persons recorded u/s 342 of the Code of Criminal Procedure. It appears from both these documents that the clear case of the accused persons was the denial of the occurrence and they have not asserted any claim much less a bona fide claim over the land in question.

4. The well settled principle of law has been stated, I say so with great respect, by Fazl Ali, J. (as he then was) in the case of *Abdul v. Emperor* AIR 1929 Pal 86 where his Lordship has discussed a large number of cases where the principle has been enunciated and discussed. It will be useful to quote the following passage from his Lordship's judgment

" We must remember that an offence of theft can be committed in respect of moveable property only and one of the distinctions between the English and the Indian law of theft is that the English law looks to ownership while the Indian Penal Code looks to possession. Thus the question which the criminal court has to decide in a case like the present one is as to who was in possession of the crops forming the subject matter of the defence at the time the crops were being cut and removed. There cannot be much difficulty in answering this question, once it is ascertained as to who was in possession of the land and who had sown the crops, cared for it and spent money and labour on it. As to the plea of good faith, it will be negatived as soon as it is found that the accused was aware of the fact that he was neither in possession of the land nor had he grown

the crops. It is said that the mere fact that the accused believed, howsoever, erroneously, that because he had title to the land, he had also title to the crops, will take away the mens rea the proof of which is absolutely necessary for a conviction of theft. Now assuming that this was a legitimate line of reasoning even in the extreme circumstances of the accused being fully aware of the land being in possession of and the crops having been grown by another person, the fact remains as to how the court is to be convinced that such a wild belief was really entertained by the accused. If the accused raises a false defence and claims to be in possession of the land of which he is not in possession and also says that he has grown the crops which is not grown by him he is obviously not helping the court to come to the conclusion that he really entertained the belief which, it is urged on his behalf, he should be credited with."

5. This being the correct legal position, the contention of the learned counsel for the petitioner is clearly untenable. Applying the principles laid down in this case and keeping in mind the findings arrived at by the courts below, it is clear that the complainant had grown the crops and the accused persons had removed the crops therefrom, as such, there could be no question that they were acting in exercise of bona fide belief that they had either title or possession over the land. As such, the point raised by learned counsel must necessarily be rejected.

6. It has been then contended by Mr. J. K. Prasad that in any case the sentence of imprisonment of six months u/s 379, Indian Penal Code, on the facts and circumstances of the case, is severe. Learned Counsel submits that on the findings of the courts below, there was some litigation over the land and keeping in mind that their dispute is really with the vendee's relation, the dispute is more or less of civil nature and the occurrence took place because of this nature of the dispute, learned Counsel further submits that as they have already suffered imprisonment for some time, it will be unnecessary to send them back to jail for a short period. I accept the submission and reduce the sentence of these petitioners to the period already undergone. In lieu of the remaining period of the imprisonment, I impose a fine of Rs. 50 on each of the petitioners and, in default, they would suffer rigorous imprisonment for two weeks. Subject to this modification, the application is dismissed.