

(1918) 07 CAL CK 0018
In the Calcutta High Court

Bibhuti Bhusan Biswas

APPELLANT

Vs

Bhuban Ram

RESPONDENT

Date of Decision : 29-07-1918

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 438
Penal Code, 1860 (IPC) — Section 290

Citation : (1919) ILR (Cal) 515

Hon'ble Judges : Shams-ul-Huda, J;Richardson, J

Bench : Division Bench

Judgement

Richardson and Shams-ul-Huda JJ.

1. This is a reference by the Sessions Judge of Dinajpur u/s 438 of the Criminal Procedure Code. The learned Sessions Judge states the facts as follows: "A steam paddy-husking machine was set up in Dinajpore Municipality in 1912 with the permission of the Municipality. Up to December 1917, it appears to have worked only by day and there was no complaint. But in that month it began working both by day and by night, and a complaint was filed, on the 11th January 1918, by ten persons living near it that the dust, smoke, smell and noise of the machine were a public nuisance both by day and by night. The District Magistrate, thereupon, prohibited, the working of the mill by night and summoned the proprietors and the manager u/s 290 of the Penal Code. At the trial ten persons living close to the mill, said that they were annoyed by the mill in various ways, but chiefly because it disturbed their sleep at night--the man who signed the petition, however, said that it did not inconvenience him at all--and 19 defence witnesses, who live in the same neighbourhood but rather further away, deposed that the mill caused them no annoyance. The trying Magistrate held that the working of the mill at night in a residential portion of the town was objectionable, and that the noise of it amounted to a public nuisance, and he fined the manager and the three proprietors Rs. 50 each u/s 290 of the Penal Code."

2. The learned Sessions Judge was of opinion that the conviction of the proprietors was bad in law, and he recommended that their conviction should be set aside. He was of opinion, however, that there was nothing wrong in the conviction of the manager.

3. We have heard the matter argued, on behalf of the persons convicted, by Mr. Sanyal, and on behalf of the Crown by the Deputy Legal Remembrancer. In the result we agree with the Sessions Judge that the conviction of the proprietors of the mill should be set aside. The general rule is that a principal is not criminally answerable for the acts of his agent. In the present case the proprietors of the mill were not living on the premises; two of the three proprietors live in the United Provinces and the third lives in Darjeeling. Speaking generally, the person liable, where the user of premises gives rise to a nuisance, is the occupier for the time being whoever he may be. The occupier in the present case is the servant of the proprietors. No doubt the proprietors might be liable for abetment. But in the present case abetment is neither proved nor charged. In this view, we must set aside the conviction of the three proprietors, Bhuban Ram, Ramananda Ram and Deo Chand Ram.

4. As to the conviction of the manager, Mr. Sanyal has argued that the facts do not bring the present case within the definition of a public nuisance to be found in Section 268 of the Penal Code. That Section, so far as it is necessary to quote it, lays down that "a person is guilty of a public nuisance who does any act, or is guilty of an illegal omission which causes any common injury, danger, or annoyance to the public or to the people in general who dwell or occupy property in the vicinity."

5. As to this question, though there may be some conflict in the evidence, we are of opinion that there were materials before the Magistrate on which he was at liberty to find that the working of the mill at night amounted to a public nuisance within the words we have read. In this view we are not disposed to interfere with the conviction of the manager or to interfere with the sentence passed upon him. The application made on behalf of the manager must, therefore be refused.

6. As regards the proprietors, we were referred to certain cases decided in England: *Rex v. Medley* (1834) 6 C. & P. 192 and *Queen v. Stephens* (1866) L.R. 1 Q.B. 702. These cases were decided under the Common Law. In India the question is merely how the Statute should be construed, and the English cases cited are, in our opinion, no authority on the construction of the Penal Code.

7. The fines imposed on the proprietors must, if paid, be refunded.