
(2013) 02 JH CK 0026

In the Jharkhand High Court

Case No : Criminal Revision No. 539 of 2003

Chandamani Tutu and Others

APPELLANT

Vs

State of Jharkhand and Another

RESPONDENT

Date of Decision : 01-02-2013

Acts Referred:

Penal Code, 1860 (IPC) — Section 148, 379

Citation : (2013) 1 AJR 804

Hon'ble Judges : H.C. Mishra, J

Bench : Single Bench

Advocate : K.P. Deo, for the Appellant; K. Shankar, APP, for the Respondent

Final Decision : Allowed

Judgement

H.C. Mishra, J.—Heard learned counsel for the petitioners and learned counsel for the State. Notice was issued to the complainant, which was returned back with the service report that the complainant has died. Petitioners are aggrieved by the judgment dated 21.9.2001 passed by the learned 1st Additional Sessions Judge, Deoghar, in Cr. Appeal No. 58 of 1986, whereby the appeal filed against the judgment of conviction and Order of sentence dated 17.5.1986, passed by Sri A.P. Sharma, learned Judicial Magistrate, 1st Class, Deoghar, in P.C.R. Case No. 538 of 1981/T.R. No. 708 of 1986 finding the petitioners guilty for the offences under Sections 148 and 379 of the IPC and convicting and sentencing them for the same, has been dismissed by the learned Appellate Court below, with the modification in sentence directing the petitioners to enter into the probation bonds of Rs. 2,000/- each with two sureties of the like amount each for keeping peace and be a good behaviour for the period of one year.

2. From perusal of the impugned judgments, it appears that the case was instituted on the basis of the complaint filed by the complainant alleging that the petitioners variously armed and forming unlawful assembly, forcibly harvested the crop, planted and grown by the complainant over the plot Nos. 308 and 262. The complainant claimed the possession of the land in question being the heir of

the recorded tenant. In course of trial, both oral and documentary evidences were adduced by the complainant in support of her claim and the witnesses including the complainant deposed the fact about the harvesting of the crop by the petitioners. However the fact remains, as it appears from the impugned judgments, that the accused petitioners also claimed to be in possession of the land in question being the heirs of the recorded tenant. The fact that the petitioners are heirs of the recorded tenant stand admitted by the witnesses examined on behalf of the complainant.

3. The impugned order also shows that at the time of the disposal of the appeal by the Appellate Court below, no one was heard on behalf of the appellants, as no one was taking interest in the ease and the Court below has disposed the appeal only upon going through the record and upon hearing the State counsel.

4. Learned counsel for the petitioners has submitted that the impugned judgments passed by the Courts below are absolutely illegal, inasmuch as, admittedly there is land dispute between the parties and it has also been submitted that both the parties are heirs of the recorded tenant and in view of the land dispute between the parties, even if the witnesses have supported the prosecution case, it was a fit case in which the petitioners ought to have been given at least the benefit of doubt. Learned counsel accordingly, submitted that the impugned judgments, cannot be sustained in the eyes of law.

5. Learned counsel for the State on the other hand opposed the prayer and submitted that the witnesses have clearly proved the fact that the accused persons formed an unlawful assembly and forcibly harvested away the crop grown by the complainant.

6. After having heard learned counsel for both the sides and upon going through the impugned judgments, I find that admittedly there is land dispute between the parties. It is also admitted that both the parties are the heirs of the recorded tenant and in that view of the matter, I am of the considered view that even if the witnesses have supported the prosecution case, in the facts of this case, the petitioners were entitled at least to the benefit of doubt. Accordingly, the impugned judgment of conviction and order of sentence dated 17.5.1986 passed by Sri A.P. Sharma, learned Judicial Magistrate, 1st Class, Deoghar, in P.C.R. Case No. 538 of 1981/T.R. No. 708 of 1986, as also the judgment dated 21st September, 2001 passed by the learned 1st Additional Sessions Judge, Deoghar, in Cr. Appeal No. 58 of 1986, are hereby, set aside. The petitioners are given the benefit of doubt and they are acquitted of the charge. This application is, accordingly allowed. Let the lower Courts records be sent back forthwith.