

(1968) 07 OHC CK 0007

In the Orissa High Court

Case No : Criminal Revision No. 500 of 1966

Dhani Rout and Others

APPELLANT

Vs

Arjun Bal

RESPONDENT

Date of Decision : 18-07-1968

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 435
Penal Code, 1860 (IPC) — Section 379

Citation : (1968) 34 CLT 1057

Hon'ble Judges : Acharya, J

Bench : Single Bench

Advocate : P.K. Dhal and S.C. Sahu, for the Appellant; L. Rath, for the Respondent

Final Decision : Dismissed

Judgement

Acharya, J.—The Petitioners, eight in number, stand convicted u/s 379, Indian Penal Code for forcibly cutting and removing the paddy crops grown by the complainant in his land and in his possession. The learned Additional Sessions Judge by his judgment dated 18th July, 1966 in Criminal Appeal No. 313 C of 1965 has maintained the conviction of the Petitioners under the aforesaid section and also the sentence of fine of Rs. 60/- passed against the Petitioner No. 1, but has reduced the sentence of fine with respect to the other seven Petitioners from Rs. 60/- to Rs. 25/- each, and in default, to undergo rigorous imprisonment for two weeks, each.

2. While admitting the revision, it has been specifically ordered that this application will be heard on the question of sentence only and not on merit.

3. Mr. Dhal, the learned Counsel for the Petitioners contended before me that once a revision is admitted, it has to be heard and disposed of on merits, notwithstanding the previous order admitting the revision only on the question of sentence. In this connection, he cited a decision of the Supreme Court in *Rabari Ghela Jadav Vs. The State of Bombay*, and another decision of the Allahabad

High Court reported in Dulla and Others Vs. The State, . The Supreme Court decision mentioned above was not for a consideration of the point raised by Mr. Dhal in the present case. That was a decision on the power of the appellate Court to admit an appeal on the question of sentence only, and their Lordships held therein that the appellate Court has no such power. Their Lordships have been pleased to hold towards the end of the sixth paragraph of the said decision as follows:

We make it clear, however, that in dealing with Mr. Umrigar's submission on this point we are concerned with the powers of an Appellate Court and not with the power of a High Court in the exercise of its revisional jurisdiction which does not arise for consideration in this appeal.

In my opinion, u/s 435, Code of Criminal Procedure, it is quite competent for this Court to call for and examine the records of any proceeding before any inferior criminal Courts for the purpose of satisfying itself regarding the correctness, legality and propriety of the sentence only, apart from the other things mentioned in the said section. This being so, there is nothing in law to prevent this Court in admitting a revision only on the question of sentence and to examine only the propriety of the quantum of the sentence passed by a subordinate Court.

4. The decision of the Allahabad High Court quoted above is to the effect that the Judge hearing the revision is not bound by the previous order admitting the revision only on the ground of sentence, and has unrestricted right to hear the same on merits. This decision also does not go so far as to support the contention of Mr. Dhal as stated above. In para 29 of the said decision, it is also observed as follows:

Though an order admitting a Revision only on the question of sentence should as a rule be respected, it is only in exceptional cases where compelling reasons are placed before the High Court that the power to examine the correctness or legality of the conviction should be utilized.

This being the position of law, there is nothing exceptional in this case and no compelling reasons have been shown which would impel me to go to the extent of examining the case on merits and the correctness of the conviction passed by the Courts below. However, having gone through the judgment of the lower appellate Court, I find that the conviction of the Petitioners u/s 379, Indian Penal Code, has been based on the evidence of p.w.s. 3, 4 and 5 who corroborated the case of the informant (p.w. 1) in all material particulars. The learned appellate Court holds that he has no sufficient reason to differ from the substantial worth of the testimony of the above-mentioned p.w.s. Being thus satisfied, about the allegations of fact against the Petitioners, he has maintained the conviction of the Petitioners u/s 379, Indian Penal Code and the conviction being based purely on a finding of fact, and there being no compelling reasons for my interference, the conviction of the Petitioners under the said section is maintained as such.

5. With regard to the sentence passed, I find that Dhani Rout (Petitioner No. 1) claiming to be the adopted son of Maguni, the elder brother of Haldhar, the vendor of the complainant, set-up a claim to the disputed lands, and with the aid and assistance of some labourers went over the disputed property and forcibly cut and removed paddy crops grown by the complainant on the said lands. So, it is Dhani Rout, who alone is the principal offender in this case, and the other Petitioners, that is, the Petitioners Nos. 2 to 8 were all his labourers who assisted Dhani in cutting and removing the paddy crops. In this context, the sentence passed on Petitioner No. 1 is, in no way excessive, which is maintained as such. The sentence passed on the other seven Petitioners appear to be some what excessive, as it is not known with what decree of deliberation these seven labourers associated themselves in the commission of the crime. That being so, while maintaining the conviction as stated above, I would reduce the sentence of fine passed against each of the Petitioners Nos. 2 to 8 from Rs. 25/- to Rs. 10/- each, and in default to undergo rigorous imprisonment for ten days each. With this alteration in the sentence, the revision is dismissed.