

(1967) 08 OHC CK 0002

In the Orissa High Court

Case No : Criminal Revision No. 619 of 1966

Narayan Sahoo and Another

APPELLANT

Vs

Srinibas Sahu

RESPONDENT

Date of Decision : 02-08-1967

Acts Referred:

Penal Code, 1860 (IPC) — Section 323, 379, 97

Citation : (1967) 33 CLT 969

Hon'ble Judges : G.K. Misra, J

Bench : Single Bench

Advocate : R.N. Misra, R.C. Patnaik and P.K. Sengupta, for the Appellant; R.N. Mohanty, for the Respondent

Final Decision : Dismissed

Judgement

G.K. Misra, J.—The Petitioners have been convicted u/s 323, Indian Penal Code and sentenced to pay a fine of Rs. 25/ - each, in default to undergo R.I. for ten days.

2. Prosecution case is that on 3-12-1965 the Petitioners along with others cut and removed paddy from plot 1468 which was in the possession of the complainant and in which he grew the crop. While the paddy was being cut, the complainant came and obstructed. The Petitioners assaulted him. The defence is that the Petitioners are in possession and had raised the crop. The complainant with some of his witnesses assaulted the Petitioners for which they started a criminal case and the complaint a regarding assault in this case is a counter blast.

3. Prosecution examined five witnesses including the doctor (p.w.5). On an analysis of the evidence the learned Magistrate held The evidence led by the complainant to prove as to who raised the crop in question is so meagre and shaky that it is not possible to come to a clear finding that the complainant had in fact grown the crop in question. Therefore the accused persons are entitled to the benefit of doubt, in so far as the charge u/s 379, Indian Penal Code is

concerned. This does not mean that the complainant is out of possession of the disputed land and that the accused are in possession.

On the aforesaid finding the learned Magistrate acquitted the Petitioner of the charge u/s 379, Indian Penal Code. He, however, believed the prosecution version regarding the story of assault.

4. Mr. Misra does not assail the finding on assault but contends that when the Petitioners grew the crop, the learned Magistrate should have held that they had the right of private defence of property. The contention has no force in the facts and circumstances of this case.

5. All the prosecution witnesses have stated that while the Petitioners were cutting the crop, the complainant obstructed and so the Petitioners assaulted him. The defence version that the Petitioners were assaulted by the complainant is not supported by any evidence. Even assuming that the Petitioners had grown the crop, they cannot have any right of private defence of property unless the act is an offence falling under the definition of theft, robbery, mischief or criminal trespass, or is an attempt to commit such offences. Prosecution evidence as led only establishes that while the complainant obstructed the cutting of paddy, he was assaulted. "There are no materials on record to justify a conclusion that the complainant or any member of his party committed theft, robbery, mischief or criminal trespass, or made an attempt to commit such offences. Mere obstruction is not an act coming within the mischief of any of the aforesaid offences. There is no evidence that the complainant entered in to field There is therefore no right of private defence of property as envisaged u/s 97, Indian Penal Code. The Petitioners had no right to assault the complainant, merely because he obstructed the cutting of the paddy.

6. In the result, the revision fails and is dismissed.