
(1999) 09 AHC CK 0161
In the Allahabad High Court
Case No : Criminal Revision No. 457 of 1983

Roshan Lal and Ors.

APPELLANT

Vs

State of U.P.& Anr.

RESPONDENT

Date of Decision : 13-09-1999

Acts Referred:

Penal Code, 1860 (IPC) — Section 323, 379, 427

Citation : (1999) 09 AHC CK 0161

Hon'ble Judges : K.D.Shahi, J

Final Decision : Partly Allowed

Judgement

K.D. Shahi,J.

1. The revisionists were convicted by Sri S.P.N. Asthana, the then 1st Additional Munsif Magistrate, Aligarh vide order dated 23121982 passed in criminal case No. 855 of 1981 holding accused Murlidhar and Ram Prakash guilty under Sections 379,323 and 472, I.P.C. and awarding them sentence of six months" R.I., three months" R.I. and two months" R.I. respectively and also sentenced the rest of the revisionists under Sections 379 and 427, I.P.C. for a period of six months" R.I. and two months" R.I. respectively.

2. On appeal Sri V.S. Kulshreshtha the then learned Sessions Judge, Aligarh vide its order dated 831983 passed in Criminal Appeal No. 6 of 1983 (Roshan Lal and others v. State of U.P and another) set aside the sentence of accused Murlidhar and Ram Prakash under Section 323, I.P.C. and maintained the conviction of all the accused persons under Sections 379 and 427, I.P.C. but instead of R.I., sentenced them to pay a fine of Rs. 500/ under Section 379, I.P.C. and Rs. 200/ under Section 427, I.P.C.

3. I have heard the learned counsel appearing for the revisionists and the learned A.G. A. for State and gone through the records. According to the prosecution case, Bihari Lal (complainant) was allotted 18 Biswa land in Plot No. 61 and 8 Biswa land in plot No. 76 before 1415 years but before allotment the

accused persons used to take benefit from these lands. After this land was converted for cultivation by Bihari Lal, hence the accused persons bore enmity with the complainant. The accused persons were on intimate terms with Sri Ram Prakash Saxena, Lekhpal of the concerned area and wanted to plough the chakroad in collusion with the Lekhpal along with the allotted land. It is alleged that the complainant moved an application to this effect before the District Magistrate, Aligarh and when the accused persons learnt about the same, then on 20/9/1981 at about 23 p.m. the accused side started harvesting the standing paddy crop. When the complainant asked the accused persons not to damage and harvest the standing crop, then they abused the complainant and accused revisionists 8 and 9, namely, Murlidhar and Ram Prakash gave slaps to complainant and threatened to kill him. The accused persons took away the harvested crop. The complainant had filed a complaint in the Court. The conviction and sentence was partly confirmed by the learned Sessions Judge on the basis of evidence on record, hence the present revision.

4. Learned counsel for the revisionists argued that the offence under Section 427 is not made against the accused persons because the damage to the crop was not made in the alleged plot of the complainant but was on the chakroad which the complainant wanted to cultivate but the specific evidence is that the accused persons harvested the crop from the alleged land of the complainant.

5. The prosecution examined Bihari Lal complainant (P.W. 1); Megh Singh (P.W. 2), Banwari Lal (P.W. 3) and Dalsher (P.W. 4) in order to prove the allegations made against the accused persons.

6. Megh Singh (P.W. 2) has specifically stated in his cross-examination that the accused persons had started to harvest the crop from the eastern side and they had harvested the crop for about two hours continuously. They were having their bullock cart in which the harvested crop was taken.

7. Banwari Lal (P.W. 3) corroborated the story of the complainant.....(sic)..... against accused Murlidhar and Ram Prakash and has found the case under Sections 427 and 379, I.P.C. proved against all the revisionists.

8. In pith and substance the offence is one and i.e. the cutting and removal of the crop and for the same offence one conviction and sentence under Section 379, I.P.C. and one conviction and sentence under Section 427, I.P.C. is not necessary, therefore, the offence under Section 427, I.P.C. is merged under Section 379, I.P.C. and on sentence it may suffice as punishment for the revisionists. The revision is partly to be allowed and accordingly partly allowed. The conviction and sentence of the revisionists under Section 427, I.P.C. is here set aside but the sentence of fine under Section 379, I.P.C. is hereby maintained. The revisionists shall immediately deposit the amount of fine, if not at all deposited and if the fine, as awarded to them by the learned Sessions Judge, Aligarh, is not deposited within a period of three months", the learned Magistrate shall take the revisionists into custody to serve out the sentence under default

clause as ordered by the Courts below.

Revision partly allowed.