
(1988) 03 AHC CK 0016
In the Allahabad High Court
Case No : Criminal Revision No. 148 of 1987

Sheo Prasad Misra

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 31-03-1988

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161
Penal Code, 1860 (IPC) — Section 352, 379, 411

Citation : (1988) 12 ACR 518

Hon'ble Judges : V.P. Mathur, J

Bench : Single Bench

Advocate : S.N. Shukla, for the Appellant; AGA and O.P. Misra, for O.P. Nos. 2, 3 and 4, for the Respondent

Judgement

V.P. Mathur, J.—On the basis of an FIR lodged by Sheo Prasad Misra in police station Khukhundu, district Deoria at 6.45 P.M. on 3-4-1983 against Shri Kant, Ram Suresh and Sidhnath, son of Harihar, a charge-sheet was submitted and the case started under Sections 379, 352 and 411 IPC. Mr. R.N. Rai PCS (J) the then Judicial Magistrate of Deoria tried the accused of that case, recorded the evidence and came to the conclusion that no case was made out and, therefore, directed their acquittal vide order dated 24-10-86. The number of the Criminal case was 1565 of 1986. Against this order of acquittal the present revision has been filed by the complainant.

2. The First Information Report allegations were that on 3-4-83 at 3 in the morning the three accused opposite parties were cutting the Arhar crop belonging to the complainant and when he reached on the spot and protested, they made him to run away from the spot under threat of assault. The complainant cried out and the witnesses Chandra Sheikhar Tewari and Kishun who were easing themselves nearby came and intervened and saved the situation.

3. The contention of the accused persons was that nothing like this had

happened and that they were in possession. The crop was sown and grown by them and they had been sowing and growing the crops since 1976 and had been cutting the same also.

4. The prosecution evidence consisted of, in all, five witnesses. PW 5 was the Investigating Officer of this case. PW 4 was the Supurdar to whom the crop, which was taken into custody by the Investigating Officer, was handed over. PW 3 was Shri Kishun son of Phool Chand, one of the eye witnesses named in the first information report. PW 2 was the first informant himself and PW 1 Chandra Sheikhar is another witness named in the First Information Report, who, however, did not support the prosecution version. The learned Magistrate analysed the entire evidence on record and came to the conclusion that the prosecution case was not proved by the witnesses.

5. A perusal of the statement of PW 3 will show that he saw the occurrence from a considerable distance of about 10 to 20 Latthas. Undoubtedly even according to the first Informant it was dark since the occurrence took place at about 3 in the morning. In such a situation from that distance it could not be possible for any one to recognize the persons who were allegedly cutting the crop inside the field. It is in the evidence of PW 2 that Arhar crop was standing in the middle of plot No. 110. Naturally the testimony of PW 3 to the effect that he saw the accused persons cutting the crop is unbelievable. It may also be mentioned that during examination-in-chief he named Siddharath and Ram Suresh as the two persons who were cutting the crop. Name of Shri Kant has not been mentioned. This witness further says that he had reached that plot in order to ease and then he saw what was happening and the accused persons made him to run away from the spot. This is not the testimony of the first Informant. According to his version, this witness was already easing in the neighborhood and on his cries he came on the spot. Shri Kishun, however, does not say a single word about the presence of the first Informant on the spot at any time. The testimony of PW 3 Shri Kishun, therefore, is unreliable and cannot be made the basis for coming to any conclusion in favour of the first Informant. Moreover, he had no occasion to know that the crop had been sown and grown by the first Informant and his testimony to that effect is of no avail.

6. The only other witness mentioned in the first information report, namely Chandra Sheikhar, has not supported the prosecution version. He was declared hostile and cross-examined by the prosecution. This will only leave the testimony of PW 2 Sheo Prasad Misra, the first Informant, to be considered.

7. The dispute is about Arhar crop of plot No. 110. In his statement u/s 161 Code of Criminal Procedure this witness gave out that the cutting of the crop was made during the day time. Now he comes with the story that the cutting was being made at 3.00 A.M. when it was still dark. He says that he reached the Thana at about 10 in the morning and handed over a written report but the First Information Report shows that it was registered in the Thana at 6.45 P.M. There is no explanation for this delay. The first Informant says that by the time he ran

away from the spot, the crop was still being cut and had not been removed but in the statement u/s 161 Code of Criminal Procedure he had told the Investigating Officer that the accused had already cut and removed the crop to their Khalihan. There is no other evidence in support of the testimony of the first Informant to show that the crop in question was sown and grown by him. He says that he had handed over Khasra to the Investigating Officer. If that was so, a copy could be obtained and filed in the Court also but there is no Khasra entry on record and, therefore, it appears that there is no revenue record of the fact that the crop was sown and grown by the first Informant or that he was in possession on the spot.

8. In these circumstances, the learned Magistrate was justified in coming to the conclusion that the case was not made out.

9. The revision has no force and is hereby dismissed.