
(2007) 04 JH CK 0017
In the Jharkhand High Court

Somar Rana and Others

APPELLANT

Vs

State of Bihar (now Jharkhand)

RESPONDENT

Date of Decision : 10-04-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 144, 202
Penal Code, 1860 (IPC) — Section 143, 370, 379

Citation : (2007) CriLJ 4670 : (2007) 3 EastCric 542 : (2007) 2 AIR Jhar R 961 : (2007) CrLJ 3563

Hon'ble Judges : Amareshwar Sahay, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Amareshwar Sahay, J.—This revision application is directed against the Judgment dated 31st July 1998. passed by the 1st Additional Sessions Judge, Giridih in Cr. Appeal No. 52 of 1993 whereby the learned Additional Sessions Judge dismissed the appeal and affirmed the conviction and sentence passed by the trial Court. The trial Court by its judgment dated 30th August 1993 had convicted the petitioners and one another for the offence under Sections 143 and 379 of the Indian Penal Code and they were sentenced to undergo R.I. for a period of two months for the offence u/s 143 IPC and R.I. for a period of six months for the offence u/s 379 IPC.

2. The prosecution case, in short, is that the informant, who was the Bataidar of the land of Jagdish Sao being Khata No. 1, Plot Nos. 73, 74, 75, 76 and 77 area measuring one acre, had grown paddy crop over the said plots. It is said that on 24-10-1976 at about 4.00 p.m. Bandhu Rana and eight others by forming unlawful assembly, armed with deadly weapons came to the field and forcibly harvested the paddy crops grown by the informant causing loss to him to the tune of Rs. 350/-. When the informant protested, he was threatened by the accused persons and, thereafter, the informant went to the house of Jagdish Sao and informed him about the cutting of paddy crops by the accused persons.

On the basis of the written report, given by the informant, the Giridih Muffasil Police registered a case under Sections 143 and 379 of the Indian Penal Code. The police after completion of investigation submitted final report stating it to be a civil dispute. Thereafter, a protest petition was filed by the informant and then on the basis of the protest petition, the learned Chief Judicial Magistrate made enquiry u/s 202 Cr.P.C. and then took cognizance of the offence under Sections 143 and 379 IPC against the petitioners and others.

3. It appears that the other accused against whom the cognizance was taken namely, Sahdeo Rana, Iajrangi Rana Prltam Rana and Basant Rana their cases were split up since they were juvenile at the time of Incidence. During the pendency of the trial the accused Bandhu Rana died and, thereafter, his name was expunged.

4. In course of the trial, altogether three witnesses were examined on behalf of the prosecution, One witness namely, Sachidanand was examined as a Court witness, who had come to prove the signature on the sate deed, which has been marked as Ext.-F.

5. The case of the defence as it appears was that the paddy crop in question was cut by the accused persons in assertion of their bona fide claim of right.

They claimed that they had harvested paddy crops grown by them. It appears that on behalf of the defence a number of documents were adduced in evidence, which were marked as Ext. A to D/1. One of the important documents, which was adduced in evidence on behalf of the defence is the certified copy of the order dated 4-1-1969 (Ext. D/1), from which it appears that a proceeding u/s 144 Cr.P.C. was initiated in between Jagdish Sao (1st party) and Bandhu Rana (2nd Party) with respect to the land of Khata No. 1, Plot Nos. 73, 74, 75, 76 and 77 being case No. Non-F.I.R. No. 17/69. The other important document adduced in evidence on behalf of the defence is the certified copy of the plaint of Partition Suit No. 9/1986, from which it appears that Jagdish Sao had filed a partition suit against the petitioners and others for carving out his share to the extent of one-third in the suit plot. Therefore, it appears that with respect to the plot in question over which the allegation of cutting of paddy crop as has been alleged against the petitioner, there was dispute with regard to the ownership of those lands.

It is a settled law that if under the bona fide claim of right the paddy crop is harvested by a person the same cannot come under the purview of offence of theft,

6. From perusal of the Impugned Judgments of the trial Court as well of the appellate Court, I find that both the Courts below have failed to consider the aforesaid documents, i.e. Ext. -D/1 and Ext.4, in its right perspective and, therefore, have come to a wrong conclusion and, thereby, wrongly convicted the petitioners for the offence under Sections 143 and 370 IPC.

7. On consideration of the materials on record, i.e. the oral evidence as well as documentary evidence adduced on behalf of the parties, I hold that the conviction of the petitioners for the offence under Sections 143 and 379 of the Indian Penal Code cannot be sustained in law.

8. Accordingly, this revision application is allowed.

9. The conviction and sentence passed by the courts below is hereby set aside. The petitioners, who are on bail, are discharged from the liabilities of their bail bonds.