
(1924) 06 PAT CK 0029

In the Patna High Court

Thakur Prasad Singh and Others

APPELLANT

Vs

King Emperor

RESPONDENT

Date of Decision : 04-06-1924

Acts Referred:

Penal Code, 1860 (IPC) — Section 380, 448, 75

Citation : AIR 1924 Patna 665

Hon'ble Judges : Foster, J

Bench : Division Bench

Judgement

Foster, J.—The Applicants have been convicted u/s 380 of the Indian Penal Code and the first applicant Thakur Prasad Singh, against whom there was a subsidiary charge under Section 75 I.P.C. was sentenced to six months rigorous imprisonment and a fine of Rs. 100 in default six weeks' further rigorous imprisonment. Each of the other applicants was sentenced to two months' rigorous imprisonment and a fine of Rs. 25 in default a month's rigorous imprisonment extra. These sentences represent in each case three concurrent sentences passed under three charges. The facts will explain how this came about.

2. There was a field of one Lali Dusadh in the village of these applicants where occasionally coins had been picked up. One Ainthia decided to dig the field and he unearthed a vessel full of Moghul rupees. As he was extracting the vessel various persons of the village came and joined in the scramble. The pot was broken and the rupees scattered. The result was that the coins found their way into the possession of numerous persons of the village. Now, the village is partly owned by one Shiv Babu of the Sugama estate and the first applicant Thakur Prasad Singh is his Manager whilst the other applicants are subordinate servants under him. The Manager came to the village with the servants and proceeded to make a round of the houses in the village demanding the coins in the possession of various house-holders. He appears to have used force and to have conducted house searches. Three of these incidents form the basis of the three charges in

this case. When the applicant Thakur Prasad Singh had collected a certain amount of money he took Ainthā in a bullock cart to the police station at Jhanjharpur, and Ainthā there informed the police of the discovery of the rupees and of what had happened and he gave the names of the other villagers in whose possession the Moghul coins still were. The local police made an enquiry and reported to the Magistrate that the conduct of Thakur Prasad Singh and his servants had been oppressive and there upon the local Sub-Inspector was directed to take the information of Musammat Nirsi, one of those whose houses had been searched. So 2 1/2 months after the occurrence Musammat Nirsi lodged the first information of this case. The Deputy Magistrate who tried the case convicted the applicant in the manner described above and in passing the sentences, which I have detailed, he appears not to have addressed his mind to the question whether the offence really fell u/s 380 I.P.C. and whether there were mitigating circumstances. The appeal was heard by the District Magistrate who found that Ainthā was taken to the police station with the design that his statement should safeguard Thakur Prasad and others against an apprehension of a criminal offence. He does not think that the information was given in pursuance of the Treasure-trove Act, because the coins were not produced at the thana. But he has not apparently considered in his judgment the question whether the sentences are appropriate. The applicants then moved the Sessions Judge for a reference to the High Court. The Sessions Judge found that the facts indicated offences u/s 448 of the I.P.C. rather than offences u/s 380. However, he considered that the only correction that should be made would be an alteration of the conviction, for in his opinion the circumstances justified the sentences. The application has been admitted here on the question of sentence only.

3. The first point urged on behalf of the applicants is one that appears to be unanswerable. The previous conviction was one u/s 380 which is punishable with imprisonment of either description for 7 years and the present conviction should be u/s 448 which is punishable with imprisonment of either description for one year. The latter offence is not therefore punishable with imprisonment of either description for a term of three years or upward and so Section 75 of the I.P.C. is not applicable. It appears to me that the learned Sessions Judge took a correct view when he regarded the case as one rather of trespass than of theft, for I fail to find proved in this case any intention to cause wrongful loss or wrongful gain. Nor can I follow the learned District Magistrate in his discussion of the motive of Thakur Prasad Singh, in taking Ainthā to the police station. It appears to me to be immaterial whether the information was intended to be one under the Treasure-trove Act or whether it had the effect of one under the Treasure-trove Act. Certainly Thakur Prasad Singh would be acting in a peculiar manner if having the desire to possess himself of these coins he first goes and beats people and then proceeds to the thana and lodges a report to the police that these coins are in existence in the village, a large number of them in his possession. It appears also to me to be very unlikely that an intelligent man would regard this

as a means of concealment of his own acts. It is much easier in this case to take a lenient view of the whole of the applicants' motive. Ordinarily the landlord will have a share in the treasure that has been concealed in the earth and discovered thereafter. It is therefore with no difficulty that I conceive that Thakur Prasad Singh regarded the treasure as, in part at least, belonging to his master. But he had no dishonest intention, for he himself went to the police station with the man whom he had just been beating and who would not be unlikely to report that fact to the police in due course. This was what actually happened. The violence done by Thakur Prasad Singh was brought to the notice of the enquiring police but there was no initiation of a private prosecution until the authorities had called upon Musammat Nirsi to lodge her information. That information was lodged after a great delay. Now it appears to me that the applicant Thakur Prasad Singh acted with bona fide claim of right and that throughout the transaction he regarded himself as having not only his landlord behind his back but also the Government. The prosecution was no doubt quite properly instituted, but I must at the same time take into account that no one in the village in the first instance moved the police with a first information. I understand from the learned Vakil who has preferred the application that the applicants have already been imprisoned for more than three weeks--for something between 1 and 4 weeks. In these circumstances this appears to me to be sufficient punishment. I therefore alter the conviction to one u/s 448 I.P.C. in the case of each of the applicants setting aside the old convictions and I reduce the sentences to the amount of imprisonment already undergone. The fines, if paid, shall be refunded.