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Court : Allahabad

Decided On : Jan-10-1912

Reported in : (1912)ILR34All210

Judge : Tudball, JJ.

Appellant : Emperor

Respondent : Bansi and ors.

Judgement :

Tudball, J.

1. The applicants have been convicted by the Magistrate of an offence under Section 430 of the Indian Penal Code. They were sentenced to one year's rigorous imprisonment each. On appeal the Sessions Judge reduced the sentence to three months' rigorous imprisonment. In revision it is urged on their behalf that the convictions should be really under Section 70 of Act VIII of 1873, in the absence of evidence to show that any diminution of the supply of water for agricultural purposes was caused or likely to be caused by the act done by the applicants. The object of this application is really to secure a reduction of sentence. I have examined the record, and there is nothing in the evidence to show of what class the canal was, the bank of which was cut ; that is, whether it was the bank of a main canal or of a distributary. It is impossible in the absence of evidence on the point to hold that the act done was one which caused or was likely to cause a

diminution of the supply of water for agricultural purposes. It appears that the applicants wanted water for the purpose of sowing their field. As they were unable to obtain it in a lawful manner, they proceeded to steal it. As the record stands, it is impossible to uphold the conviction under Section 430 of the Indian Penal Code. In any case mischief was committed. It is an act of wilful mischief for any person to make a breach in the wall of a canal. It is an act which causes such a change in property as destroys or diminishes its value or utility or affects it injuriously. There is nothing on the record to show the extent of damage done. The conviction must, therefore, be held under Section 426 of the Penal Code. It is true that the act is also covered by Section 70 of the Canal and Drainage Act. But the offence committed is far from trivial, Section 7 shows clearly that Section 70 does not bar the prosecution under any other law of any offence punishable under the Canal Act. The maximum sentence under Section 426 is three months' rigorous imprisonment. The sentence upheld by the lower appellate court is, therefore, not in excess of the maximum allowed by law. The offence is a serious one and the act done might have resulted in very great loss, not only to the accused but to other persons as well. In the circumstances of the case I see no object in interfering with the sentence as maintained by the lower court. I alter the conviction to one under Section 426 of the Indian Penal Code and uphold the sentence. The applicants, if on bail, will surrender.