

Beni and ors. Vs. State

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Court : Allahabad

Decided On : Nov-24-1964

Reported in : AIR1966All11; 1966CriLJ1

Judge : H.C.P. Tripathi, J.

Acts : [Northern India Canal and Drainage Act, 1873](#) - Sections 3(2), 70(1) and 70(2)

Appeal No. : Criminal Revn. No. 1748 of 1963

Appellant : Beni and ors.

Respondent : State

Advocate for Def. : R.K. Shukla, A.G.A.

Advocate for Pet/Ap. : M.N. Shukla, Adv.

Disposition : Revision allowed

Judgement :

ORDER

H.C.P. Tripathi, J.

1. This revision is directed against in order of the learned Sessions Judge, Varanasi, upholding the applicants conviction and sentence of Rs. 20 each as fine

under Section 70, Clauses (1) and (2) of the Northern India Canal and Drainage Act (Act VIII) of 1873, as recorded by a Magistrate, First Class on 31-12-1962.

2. A complaint was filed by one Bashistha Tewari on the allegations that on 21-7-1962, at 2 P.M. the applicants demolished the water course which was supplied with canal water from outlet No. 1 of Ben Canal and included the land in their plot No. 768 and when the complainant remonstrated they were prepared to beat him. When summoned, the applicants pleaded not guilty and stated that the allegation made in the complaint were false and that it had been filed on account of enmity. In support of his case the complainant examined himself and two eye-witnesses Ramjeet Singh and Sita Ram. Ram Baksha Prasad, Canal Amin also testified that there was a water-course near plots Nos. 766 and 768 and that in 1370 fasli it had been filled up. On the other hand the applicants examined Shyam Lal, Lekhpal, Ram Kishan Singh Sabhapati, Ganga Ram, Ram Nandan, Kamla Prasad and Baldeo Pande in support of their case that there was no such water-course existing at the spot.

5. The learned Magistrate reached the conclusion that there was an old and well established water-course existing on the Southern ridge of plot No. 768 and the same was demolished by the accused. He, therefore, convicted them as indicated earlier.

4. I have heard learned counsel for the applicants and have perused the relevant portions of the record.

5. The relevant portion of Section 3 reads:

'(1) 'Canal' includes-

(o) all water-courses..... 2. 'Water-course' means any channel which is supplied with water from a canal, but which is not maintained at the cost of the Government, and all subsidiary works belonging to any such channel.'

6. In order to bring out an offence under Section 70 of the Act, therefore, it must be established that there was a recognised water-course which had been demolished or damaged by the accused. In this case, however, a number of persons have

appeared on the side of the defence who have stated that there was no water-course touching the plot in question. D. W. 1 Shyam Lal is me Lekhpal of the village. On the basis of the revenue record as well as on his personal knowledge he clearly asserted that in plots Nos. 766 and 768, etc., there was no watercourse. Similar are the statements of Sabhapati Ham Kishan Singh and other residents of the village. If the water channel had been existing on these plots since a long time, i.e., about 30 years as has been alleged by the prosecution, there is no reason why it has not been shown as such in the revenue record on the basis of which the Lekhpal had asserted that no such watercourse existed on the land. In the case of *Kanhaiya Singh v. Rex*, ILR 1950 All 780, it was held that in the absence of any order under Section 20 or Section 21 of the Northern India Canal and Drainage Act, whether a particular channel is or is not a water-course is a question of fact and the decision of that question would depend upon the decision of the question whether the watercourse is recognised as such by the people of the locality.

7. On the state of evidence on record it is difficult to hold that even if there was any channel on the spot it was recognised as such for the purposes of irrigation by the people of the locality. In order to sustain the conviction of the applicants, therefore, it was essential for the prosecution to have proved that there was a water-course in their plot, that water-course was existing since a long time and had been recognised as such for the purposes of irrigation by the people of the locality. In my opinion, however, the prosecution has failed to prove that there was any such channel and that the complainant had acquired a right to the user of the water-course in question. He could, therefore, have no legitimate grievance if the applicants who were the owners of the land dealt with it in any manner they liked.

8. This revision is allowed, and the conviction and sentences of the applicants are set aside. The fines if paid by them shall be refunded to them.

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