

Dunyapat and ors. Vs. Emperor

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Court : Allahabad

Decided On : Jul-16-1919

Reported in : AIR1919All90(2); 52Ind.Cas.790

Judge : George Knox, A.C.J.

Appellant : Dunyapat and ors.

Respondent : Emperor

Judgement :

George Knox, A.C.J.

1. Complaint was instituted by one Pandit Bawa Ram to the effect tat on the 20th of June a duststorm 'Swept through the village of Mahotra, with the result that nine Mahwa and one mango tree were uprooted. In addition to these trees uprooted by this duststorm there were two old Mahwa trees which had fallen a year before and were lying on the ground. The accused, who are tenants in the village Mahotra, removed these uprooted trees and the two Mahwa trees which had fallen the year previous and took possession of them The tenants appeared and admitted having taken the trees and kept them within their possession. The Courts below have found that the removal of these trees amounted to an offence of theft. It has been argued in revision in this Court that the act of the tenants was wanting in the element of dishonesty which is a necessary essential of every theft. The argument is that the Zemindar has been attempting to enforce his rights without having

recourse to the Civil Court. The case, it is said, is for the Civil Courts and not for the Criminal Courts. The plea is raised that there is a custom in this village whereby tenants can under such circumstances remove trees. An extract from the wajib-ul- arz of 1860 and an extract from the wajib-ul arz of 1860 were read over to me as proving 'that the custom set up by the tenants exists and prevails in this village. I do not understand these extracts as in any way evidencing a custom authorizing tenants to remove without the consent of the Zemindar whole trees which have been uprooted by duststorms. But I am not going to lay down any finding as to whether such a custom does or does not exist in the village of Mahotra;--that is a matter for the Civil Court, All I have to consider is whether it has been proved in this case that the tenants dishonestly removed certain trees. The Courts below have found and the tenants have admitted that they did remove the trees. It was for them to prove that the removal was not dishonest. The removal certainly caused loss to the Zemindar which was wrongful loss to him and caused wrongful gain to the accused. The accused caused this loss by means which at the time of employing those means they knew to be likely to cause it. It may well be that they had some intention of, by this act, creating as well evidence of a custom to remove the trees in their favour. As the evidence on the record stands, that loss was wrongful loss and the case falls within illustration (a) of Section 378 of the Indian Penal Code. I was referred to the case of Bhagwat Satan Misir v. Emperor 35 Ind. Cas. 167 : 14 A.L.J. 399 : 17 Cr.L.J. 295. There is no finding in this case that the accused was acting bona fide, on what he supposed to be his legal right,

2. The sentence of fine does seem to me to be severe. I reduce the fine to a fine of Rs. 320 or Rs. 40 on each one of the accused. Of this sum, if realised, Rs. 300 will be given to Pandit Bawa Ram, who appears prima facie entitled to the trees that were removed. In other respects the sentence passed by the Court below will stand good.