

Katwaru Vs. State

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Court : Allahabad

Decided On : Sep-30-1975

Reported in : 1976CriLJ943

Judge : Hari Swarup, J.

Appellant : Katwaru

Respondent : State

Judgement :

ORDER

Hari Swarup, J.

1. This revision has been filed by the applicants against their conviction under Section 297, IPC and sentence of fine of Rs. 200 awarded to applicant Katwaru and Rs. 100 awarded to applicants Ram Briksh and Nebu Lal.

2. The case of the prosecution in brief was that plot No. 499 area .65 acre, was a grave yard of the family of the complainant Abdul Hamid. The accused were said to have ploughed the land in spite of his protests. This, according to the complainant, had wounded his religious feelings and the feeling of other members of his family.

3. Defence of the accused was that the land was not a grave yard but a grove land belonging jointly to Smt. Dongarl, wife of accused Katwaru, and the complainant, and that the accused had the right to plough the land.

4. Courts below have believed the prosecution version to the effect that there were at least three graves on the land and that the accused had ploughed the land and thereby had wounded the feelings of the complainant and the members of his family. Lower appellate Court found that although the accused had no intention of wounding the feelings, they must have had knowledge that they were wounding the feelings of the complainants and others. The lower appellate court maintained the conviction but reduced the sentences of imprisonment to sentences of fine as mentioned above.

5. Learned counsel for the applicant contended that even on the findings recorded by the Court below no offence under Section 297, IPC is made out. Section 297, IPC provides:

Whoever, with the intention of wounding the feelings of any person, or of insulting the religion of any person or with the knowledge that the feelings of any person are likely to be wounded, or that the religion of any person is likely to be insulted thereby, 'commits any trespass in any place of worship or on any place of sepulture, or any place set apart for the performance of funeral rites or as a depository for the remains of the dead or offers any indignity to any human corpse, or causes disturbance to any persons assembled for the performance of funeral ceremonies, 'shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

It is thus essential that before an offence can be committed under this section, the place must have been set apart as a depository of the remains of the dead. Evidence has been led in the case which consisted of the oral testimony and documentary evidence. The Khatauni of 1372-74 F. showed the land as co-bhumidari of Abdul Hamid and Smt. Dungari. Similar entries are recorded in the khasra of 1373 F. and the Khatauni of 1375-77 F. There is also the testimony of the Lekhpal that the plot in dispute had a grove with 25 mango trees and that 'no demarcating line separating' 'the portions of the two co-bhumidars, From evidence on

record it cannot be held the plot, or any part of it had been apart as depository for the remains of dead. The conviction of the applicants under Section 297, IPC was thus in accordance with law.

6. The revision is accord allowed, the conviction of the applicant under Section 297, IPC and the sentences awarded to them are set aside. The fine, if paid, will be refunded.

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