

Dip Chand Vs. Emperor

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Court : Allahabad

Decided On : Mar-07-1934

Reported in : AIR1934All872; 155Ind.Cas.540

Appellant : Dip Chand

Respondent : Emperor

Judgement :

ORDER

Bajpai, J.

1. The accused, Dip Chand, was charged under Section 353, Penal Code, the allegation being that he gave two or three slaps to a canal patrol. The facts are that the naib tahsildar had gone to village Malikpur to make collections of land revenue and canal dues. Certain persons including the accused represented to the naib tahsildar that the entries regarding the canal dues were incorrect. The tahsildar sent for the canal patrol who started explaining the entries. Dip Chand and others objected and said that they were incorrect. Upon this the canal patrol abused Dip Chand and Dip Chand gave him two or three slaps.

2. The learned Magistrate came to the conclusion that the patrol was not a public servant in the execution of his duty at that moment. He therefore did not convict Dip Chand under Section 353, Penal Code, but convicted him under Section 323, Penal Code, and sentenced him to pay a fine of Rs. 100. This conviction has been

upheld by the learned Judge who has also maintained the sentence. In revision it is argued that a man who has been charged under Section 323, Penal Code, cannot be convicted on the failure of the prosecution to prove that the person against whom the criminal force was used was a public servant, under Section 323, Penal Code, because the latter is not a minor offence as compared to the former. It is argued that Section 353, Penal Code, comprises only assault or criminal force whereas Section 323, Penal Code, comprises hurt which implies causing bodily pain, disease or infirmity. It is contended that assault is mere gesture and criminal force is mere motion, whereas hurt implies the giving of bodily pain. The maximum punishment provided under Section 323 is one year and the fine may extend to Rs. 1,000, whereas under Section 352, Penal Code, the maximum punishment is three months and the fine may extend to Rs. 500. This, it is said, also shows that the man who is said to cause assault or use criminal force alone is deemed to commit a minor offence as compared to the man who caused hurt. It is not necessary for me to give an authoritative decision on this point although I am inclined to think that there is considerable force in the argument of learned Counsel for the applicant. The accused however can be convicted under Section 352, Penal Code, for having assaulted or used criminal force to the canal patrol. It is said that the accused used criminal force on grave and sudden provocation given by the patrol who had abused the accused and therefore the conviction ought to be under Section 358, Penal Code. I agree with this contention. The finding of the learned Magistrate which has not been set aside by the Judge is that the patrol abused Dip Chand. Dip Chand thus had received grave and sudden provocation and no wonder he lost his temper and gave the patrol two or three slaps. Under the circumstances it is contended that the sentence of Rs. 100 fine is too severe. I agree with this submission. The result is that I change the conviction of the accused to one under Section 358, Penal Code, and sentence him to a fine of Rs. 15. The fine, if paid, will be refunded to the extent of Rs. 85.