

Srish Chandra Sircar Vs. Emperor

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Court : Allahabad

Decided On : Aug-09-1918

Reported in : AIR1919All385; 50Ind.Cas.347

Judge : Tudball, J.

Appellant : Srish Chandra Sircar

Respondent : Emperor

Judgement :

Tudball, J.

1. The applicant has been convicted of wilful mischief under Section 427 of the Indian Penal Code. The facts of the case are as follows: The applicant is the owner of a house in Benares. He himself is a resident of Calcutta but frequently comes to Benares. He wished to rebuild his house and he gave the contract to a contractor and the building was carried out beyond doubt in accordance with his instructions. The foundations were sunk to a depth of four feet. I assume for the purposes of this judgment that this was done on the applicant's own order. The next door neighbour's house, however, had a foundation only two feet deep. The contractor did not prop up the next door neighbour's wall and failed to take the ordinary precautions which a builder ought to have taken with the result that the next door neighbour's wall sank and cracked and a fair amount of damage has been done. The complainant Musammat Makhna came into Court alleging that the

applicant had intentionally caused the foundations to be dug four feet deep; had intentionally caused the omission to prop up her wall and had done so maliciously in order to damage her, because she had refused to sell her house to the accused when he desired to purchase it. If the Courts below had found this to be true that the accused was actuated by malice. I do not think there would be any difficulty in upholding the conviction. But as a matter of actual fact the Court of first instance distinctly says in its judgment that the evidence on this point is insufficient to establish it. The lower Appellate Court has, in my opinion, somewhat unfairly made the following remark: 'it is true that the Magistrate held the evidence insufficient to prove this but he did not say it was untrue.' In other words, the learned Sessions Judge, though the evidence was insufficient, thought that he was justified in holding that the fact was proved. The case can only, if it is to be fairly tried, be tried on the actual finding by the Magistrate that the alleged malice is not established. In the absence of this malice it seems to me impossible to uphold the conviction of the applicant under Section 427. There is nothing to show that he directed the contractor not to prop up the complainant's wall. It may be assumed I think that he gave the contract in the ordinary way in which contracts are given that he was justified in expecting that the contractor would carry out his duties as a builder in a proper and efficient manner. The expert evidence which was called all went to establish this, that if the wall had been properly propped up no damage would have accrued. The damage, therefore, was the result of the, contractor's negligence in omitting to prop up the wall. It was not due to any negligence or malice on the part of the present applicant. If anybody was liable criminally for the act it was the contractor who omitted to do his duty. In digging the foundations four feet deep he must have known that he was likely to cause damage unless he took the proper precautions which are ordinarily taken to support the neighbouring wall. The applicant cannot be said to be liable for the contractor's omission to do this. On the facts of the case found it seems to me that the conviction of the applicant is not justified in law. I allow the application and set aside the conviction and the sentence. The fine, if paid, will be refunded