

Antaryami Satpathy and ors. Vs. the State

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Court : Orissa

Decided On : Apr-18-1968

Reported in : AIR1968Ori160; 34(1968)CLT723; 1968CriLJ1186

Judge : S.K. Ray, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 141, 142 and 143

Appeal No. : Criminal Revn. No. 97 of 1967

Appellant : Antaryami Satpathy and ors.

Respondent : The State

Advocate for Def. : Standing Counsel and ;P.K. Dhal, Adv.

Advocate for Pet/Ap. : A.K. Das, Adv.

Judgement :

ORDER

S.K. Ray, J.

1. The petitioners were put on trial under Sections 143 and 379, Indian Penal Code Thp trial court convicted them under both the sections and sentenced them to pay a fine of Rs 60 each on each count in default to undergo R. I for one month on each count The appellate court acquitted them all of the charge undei Section

379, but maintained their conviction and sentence under Section 143. I P C The Revision is filed against this order of the lower appellate court.

2. The petitioners, according to the prosecution case, are alleged to have trespassed into the threshing floor of P. W. 1 on 9-2-65 at about 6 a.m. and carried away paddy after threshing paddy sheaves on that floor, to the house of petitioner 1. On protest by P W. 1, it is alleged, some of the petitioners locked him up in one of his rooms and confined him there till the threshing operation was over. But there is no separate charge with respect to this part of the occurrence. The paddy so carried away is the usufruct of a land which had been purchased by a registered sale deed dated 1-10-64 (Ex A) by P. W. 1 from one Prema, daughter by first wife of one Naran Misra. He (P. W. 1) is said to have purchased only the interest of Prema in this land about eight months after the death of Naran. P. W. 1 is the brother of Naran Misra and paternal uncle of Prema.

3. The defence case is that the petitioner Benu Sutar is a Bhag tenant in respect of the land which is said to have been purchased by P W 1, under Shanti Dibya, the junior surviving widow of Naran Misra. In support of this plea the defence has examined Shanti as D. W. 2. There is no evidence on record about any partition of the land having been effected between Prema, daughter of Naran Misra and Shanti his surviving widow.

4. Though this is a case which appears to be pre-eminently one of civil dispute, yet only one point was urged in pressing for an acquittal. The point is that once there is acquittal under Section 379 which is stated to be the common object in the charge under Section 143, the conviction under the latter section cannot be maintained. This contention, in my judgment, has substance, and must prevail.

5. The charge under Section 143 reads as follows;

'That you on or about the 9th February, 1965 at about 6 a.m. at Biripata Sasan, were members of an unlawful assembly, the common object of which was theft of paddy, and thereby committed an offence punishable under Section 143, Indian Penal Code.' The charge under Section 379 is as follows:

'That you, on or about the same day and at the same time, removed paddy from the threshing floor of Ramachandra Misra, worth about Rs. 200 in spite of his protest, and thereby committed an offence under Section 379 Indian Penal Code'

6. The effect of acquittal of the charge under Section 379 it must be assumed for the purpose of this prosecution is that there was no removal of paddy from the threshing floor of Rama Chandra Misra (P. W. 1) on the date and hour of the occurrence. That being the only common object stated in the charge under Section 143 it must necessarily follow that that common object itself no longer existed or has been disapproved in the case, with the result that the charge under Section 143 must fail.

7. The petitioners' counsel cited a number of decisions in support of this proposition, which is otherwise logically sound. The case reported in 1936 Mad WN 896 Chinna-ppan v. Emperor is on all fours with the present case. There, the petitioners were charged under Sections 143 and 379, but the lower courts while acquitting them of the charge under Section 379, convicted them under Section 143. I. P. C. Against this conviction, the accused persons had come before the Madras High Court, and there it was held that where it is found that the common object set out in the charge is not made out, the accused must be acquitted of the offence of unlawful assembly under Section 143, and cannot be convicted by substituting a different common object from the one alleged in the charge

To the same effect is a decision reported in AIR 1934, Pat 505 Dodraj Mahatton v. Emperor. Here certain persons were charged under Section 430, I. P. C., for committing mischief by cutting the Bundh of river and causing diminution of the supply of water for agricultural purposes. They were also charged under Section 143, the common object of which was to commit mischief by cutting the Bundh. They were acquitted of the charge under Section 430, but were convicted under Section 143, I. P. C. It was held by the High Court of Patna that when the common object of the charge under Section 143 constituting a separate offence for which a separate charge was framed failed, the accused persons were also entitled to an acquittal under Section 143, on the ground that the common object had not been established.

A decision in AIR 1955 Cal 515. *Harish Chandra v. The State*, was also cited in support of this proposition. There two charges were framed, one under Sec. 447 and the other under Section 143, Indian Penal Code. The common object stated in the charge under Section 143, was the substantive charge of criminal trespass. In holding that acquittal under Section 447 would lead to an acquittal of the charge under Section 143 it was stated as follows:

'If the evidence is insufficient to prove the substantive charge of criminal trespass, it will be extremely difficult to hold that the accused were members of an unlawful assembly the only common object of which was to commit the offence of criminal trespass, as an abstract proposition of law, it might not be inconceivable that some persons might form themselves into an unlawful assembly for the purpose of committing an offence of criminal trespass although no actual offence of trespass was committed, but then that would be a position very much divorced from the realities of the situation'

Theoretically there can be an unlawful assembly, the common object of which is one of those specified in Section 141, without anything further being done in carrying out that common object. Even though in such cases, the common object is not achieved, technically a conviction under Section 143 could be maintained. But then there must be evidence on record of the unlawful assembly having reached a consensus of purpose of achieving any of the various objects enumerated in Section 141, I. P. C., apart from the overt acts in proof of the common object constituting a separate offence of which the accused have been charged and acquitted. It has been clearly enunciated in AIR 1965 SC 202. *Masalti v. State of Uttar Pradesh*, that the mere presence in an assembly does not make a person a member of an unlawful assembly unless it is shown that he had done something or omitted to do something which would make him a member of such unlawful assembly, or unless the case falls under Section 142. I P. C. Therefore, in order to maintain a conviction under Section 143, it must be proved that persons alleged to constitute that unlawful assembly either entertained one or more of the common objects specified in the five clauses of Section 141, or being aware of the facts which rendered the assembly unlawful, intentionally joined that assembly or continued in it. The proof of such entertainment of the common object or

awareness of facts which render the assembly unlawful must normally relate to circumstances or acts giving rise to such inference existing or done prior to the prosecution of such common object. Where the common object set out in the charge is itself a separate substantive offence and the evidence offered in proof of this substantive offence is also relied upon in establishing the common object, acquittal of the charge for this separate offence must necessarily entail acquittal of the charge under Section 143. I. P. C

8. The lower appellate Court while acquitting the petitioners of the charge under Section 379 does not advert to any other circumstance or evidence on record for the purpose of holding that even though actual theft is disproved, the common object is established.

9. The learned standing counsel relied upon a decision of this Court reported in (1968) 34 Cut LT 226 Upendranath Giri v. State, as against the contention advanced by the petitioners. But that case is clearly distinguishable. There the accused persons were charged under Section 147. for rioting with the common object of assaulting the informant and some of them were also charged for assault under Sections 323 and 325 for having actually committed the assault. The charge of assault failed, because it was difficult to say definitely as to which of the petitioners actually inflicted the assault and the benefit of doubt was given to the accused who had not been specifically charged for assault. Acquittal or specific charge of assault, does not, ipso facto, disprove that assault was committed by some members of the unlawful assembly, in such cases the common object, by acquitting the petitioners of the specific charge of assault, cannot be held to have been disproved. Therefore, that decision has no application to the facts of this case.

10. Reliance was also placed by the petitioners on a case reported in 1964 (2) Cri LJ 111 (Pat) Ramphal Gope v. State of Bihar. In that case the accused-petitioners were convicted by the trial Court under Sections 148, 324 and 324/34, I. P. C. The appellate Court altered the conviction from under Sections 147 to 148 and from 323 to 324 and from 324/34 or 323/34 I.P.C. There was a compromise petition filed in the trial Court which had accepted that petition with regard to offence under

Section 323. The High Court accented the compromise and acquitted them of the charge under Section 323/34 as they were offences com-poundable without permission of the Court His Lordship, however, held that once by reason of the compounding of the offence under Section 323/34 the accused persons are acquitted of that offence and by reason of such acquittal the common object of assault set in the charge under Section 147 fails the conviction under the latter section must scrordinsly fail In view of the aforesaid position I am of the opinion that the legal contention raised by thf petitioners is well taken, and the revision is accordingly allowed and the petitioner are acquitted.

The fines if paid shall be refunded.

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