

Bramhachari Martha Vs. the State

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Court : Orissa

Decided On : Jul-15-1958

Reported in : AIR1959Ori207; 1959CriLJ1460

Judge : R.L. Narasimham, C.J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 378 to 379

Appeal No. : Criminal Revn. No. 272 of 1957

Appellant : Bramhachari Martha

Respondent : The State

Advocate for Def. : Govt. Adv.

Advocate for Pet/Ap. : G.K. Misra and ;A. Mohapatra, Adv.

Disposition : Petition allowed

Judgement :

R.L. Narasimham, C.J.

1. This is a petition in revision against the conviction of the petitioner under Section 379 I. P. C. and the sentence of fine of Rs. 200/- passed by a First Class Magistrate of Khandpara, which were upheld on appeal by the Sessions Judge of Puri.

2. The petitioner who is a resident of village Koithapalli was charged with dishonest removal, from the possession of Government of 19 mango trees by cutting and removing the same from Anabadi plot No. 444 of the said village. Several other co-villagers were said to have assisted him in cutting and removing the 'trees, but they were acquitted by the learned Magistrate; but the petitioner was convicted and sentenced as he was said to be the ringleader.

3. The plea taken by the petitioner was that the trees were in the possession of the village Thakurani and for the purpose of that village deity the villagers, including himself, cut the trees and sold them to other parties.

4. In a dispute of this type the criminal court has to address itself solely to the question of possession. Unless the prosecution can affirmatively establish that the disputed mango trees were in the possession of Government the question of commission of an offence under Section 379 I. P. C. does not arise. But I find that the lower court has missed the point and has discussed the question as to whether the Government was the real owner of the plot. Having come to the conclusion that the Government and not the village deity was the owner of the plot he observed that the villagers had no right to cut or sell the mango trees and that the petitioner was therefore guilty under Section 379 I. P. C.

5. The lower appellate court has clearly mis-directed itself. Even assuming that anabadi plat No. 444 has been recorded in the Anabadi Khata of the Government, and the title to the same remained with the Government, the main question for consideration is whether the land was in the possession of the Government. Doubtless, if it was mere waste land there may be no specific evidence of acts of possession but as regards mango trees it should be possible for the prosecution to show that the Government exercised acts of possession by either leasing out the fruits periodically or selling the timber on some occasions in the past. In fact, the Tahsildar (P. W. 1) admitted that the tope in question, from which the trees were cut, in plot No. 444, were never leased out in the past and That there were no papers in his office to show that any act of possession by way of leasing out the trees annually was ever exercised by the Government.

The other prosecution witnesses have not also spoken about the possession of the Government. On the other hand, it is admitted that adjacent to this plot there is another plot No. 89 which was recorded in the name of the village Thakurani and which was being possessed by the villagers on behalf of the deity. The petitioner's explanation, therefore, that the villagers were possessing both the plots and utilising the timber of the trees for the purpose of the deity, might possibly be true whatever may be the defect in the deity's title to the plot, in question.

6. On the evidence adduced by the prosecution, therefore, the offence under Section 379 I. P. C. which is an offence against possession) cannot stand.

The petition is therefore allowed, the conviction and sentence are set aside and the petitioner is acquitted. The fine, if paid, shall be refunded.

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