

Natabar Sahu Vs. Radhamohan Sahu and ors.

Natabar Sahu Vs. Radhamohan Sahu and ors.

SooperKanoon Citation : sooperkanoon.com/529083

Court : Orissa

Decided On : Dec-16-1968

Reported in : AIR1969Ori250; 1969CriLJ1260

Judge : S.K. Ray, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 96 and 427

Appeal No. : Criminal Appeal No. 56 of 1966

Appellant : Natabar Sahu

Respondent : Radhamohan Sahu and ors.

Advocate for Def. : R.C. Patnaik, Adv.

Advocate for Pet/Ap. : G.G. Das, Adv.

Disposition : Appeal dismissed

Judgement :

S.K. Ray, J.

1. This appeal has been filed against an order of acquittal after obtaining leave, under Section 417 of the Code of Criminal Procedure.

2. The five accused persons were charged under Section 427 of the Indian Penal Code for having committed mischief by way of causing damage to the extent of Rs. one thousand by demolishing the house of the complainant and taking away household materials.

3. The complainant's case is that the house belonged to him of which he was in possession and was living there with his daughter. On 30-11-64 at about 10 A. M. all the accused persons, who were all residents of Berhampur, trespassed into the said house, demolished it, and removed household materials belonging to the complainant. The total damage caused thereby is valued at Rs. 1,000/-.

4. Of the five accused persons, respondent No. 1 is the father and respondents 2 to 4 are his sons. The defence of respondents 1, 3, and 4 is one of non-participation in the alleged occurrence. The defence of respondent No. 2 Godavari Sahu is that the house in question had been mortgaged to him by the complainant and he had purchased the same in court auction in execution of the mortgage-decree and was delivered Khas possession. He also admits that on the date of occurrence he demolished the house, but he did so in order to construct a new house for which he had dug foundation.

5. It is admitted that the accused Godavari Sahu is the son of Radhamohan Sahu, and he obtained a mortgage-decree against the complainant in T. S. No. 248/57 and in due course final decree was passed. The house in question which was the subject-matter of the mortgage, was sold in execution of the mortgage-decree in E. P. No. 203/59 and was purchased by the decree-holder, Godavari Sahu. Ext. B is the final decree in T. Section 248/57 and Ext. C is the preliminary decree. Ext. A is the sale-certificate of the disputed house and Ext. D is the copy of the writ of delivery of possession. Ext. E is the receipt in support of taking delivery of the house by Godavari Sahu and Ext. F is the judgment in T. S. No. 225/62 which the complainant had filed to set aside the said sale. But, this suit was dismissed. The delivery of possession through Court took place on 27-5-62. The complaint petition states that the appellant and his daughter were occupying the house from 15-2-63. There can, therefore, be no manner of doubt that the trial court was justified in holding that the accused Godavari Sahu was delivered Khas possession of the

house by Court on 27-5-62 and his title and possession was perfected.

6. The defence case of Godavari Sahu that he demolished the suit-house to build a new house is also fully corroborated by P. W. 1, the complainant himself when he says: 'Godavari Sahu demolished this house to construct a new house.'

7. The evidence is neither sufficient nor convincing to prove that any loss or damage was caused to the complainant by reason of removal of any of the household articles of the complainant. The finding of the trial court on this aspect of the prosecution case is, therefore, correct.

8. On these aforesaid findings, the charge must necessarily fail. But it is argued that even though the house belonged to respondent No. 2, the same was in occupation of the complainant since 15-2-63 and demolition of the house in such circumstances would amount to mischief and is punishable under Section 427, I. P. C. The offence of mischief may be caused by a person by an act affecting the property belonging to the person who commits the act. There is nothing wrong in this proposition.

Section 425 of the Indian Penal Code explicitly provides for such an offence. Illustrations (d), (e), (f) and (g) under that section set out specific cases in elucidation of this principle. In each of these illustrations, one of the crucial elements is that there must be an intention to cause any loss to another person. Therefore, it is now to be considered if the complainant was in occupation of the house on the date of occurrence and if the accused persons had any intention to cause or knew that they were likely to cause wrongful loss or damage to the complainant by demolition of the house.

9. The first question to be considered is whether the complainant was in occupation of the house after the same had been sold and possession thereof delivered by the Civil Court on 27-5-62. The date of possession of the complainant as stated in his complaint-petition is 15-2-63. The complainant examined four witnesses including himself. P. W. 2 has been expunged from record. So, besides the complainant, the other two witnesses, viz. P. Ws. 3 and 4, are the only two witnesses who have testified in support of the complainant. P. W. 3 is the brother-

in-law of the complainant (P. W. 1). P. W. 4 is the elder brother of P. W. 1. None of these two witnesses speaks a word about possession of the house by the complainant. The complainant, P. W. 1 also does not say how and when he got back possession of the house after the Civil Court delivery to respondent No. 2, but from Ext. 9, the judgment in G. R. Case No. 71/63, it appears that the appellant had trespassed into the house on 15-2-63.

The appellant took the plea in that criminal case that he did not trespass, but was living in a rented house. There is, therefore, no trustworthy evidence on record that he was in possession of the house on the date of occurrence.

10. The next question to be dealt with is whether the principal ingredient of the offence that there must be an intention to cause wrongful loss or damage to the complainant has been established.

11. It is admitted by P. W. 1 that Godavari Sahu demolished the house to construct a new one, and this indicates that his intention was not to cause wrongful loss to the complainant, but to construct a new house after demolishing his old one. In view of the finding, which cannot be impeached, that the house in question belonged to Godavari Sahu, respondent No. 2, he had a right to demolish it and also to remove any trespasser therefrom by use of minimum force that is reasonably necessary to defend his possession from a trespasser, without committing breach of peace. This right is inherent in every owner of the property in cases of recent trespass. It must therefore be held that the main ingredient of the offence has not been established.

12. Besides Godavari Sahu, the other accused persons have denied to have taken any part in demolition of the house. No evidence has been adduced by the prosecution implicating them. P. Ws. 3 and 4 are completely silent with regard to any overt act having been committed by them.

In the circumstances, there is no merit in this appeal which must be dismissed and the order of acquittal passed by the court below is confirmed.