

Uma Charan Chand Vs. Charan Das

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Court : Orissa

Decided On : Nov-12-1968

Reported in : 35(1969)CLT186; 1969CriLJ1086

Judge : B.K. Patra, J.

Appellant : Uma Charan Chand

Respondent : Charan Das

Advocate for Pet/Ap. : Sri. R.K. Mohapatra

Judgement :

ORDER

B.K. Patra, J.

1. The petitioner was convicted under Section 379, I.P.C., by a First Class Magistrate, Puri and sentenced to pay a fine of Rs. 500 in default to undergo R. I. for a term of 6 months. The conviction was upheld in appeal by the Sessions Judge, Puri, but he reduced the fine to Rs. 200 in default of payment of which the petitioner was directed to undergo B. I. for 2 months. Some other persona who were prosecuted along with the petitioners were acquitted in the trial Court.

2. The dispute in this cage relates to Al. 71 Acres of laud pertaining to khata No. 286 situate in mouza Tarakor. The case of the opposite party, who was the

complainant in the trial Court is that his father Banoha Das was in possession of the land and after his death it is the opposite party, who has been in possession thereof and as usual raised Babi crop on the land in the year 1963. On 4-3-68 he uprooted biri and mung crop from the land and was removing the same in a cart when the petitioner along with few others stopped the cart, unyoked the bullocks and forcibly removed the crops. The petitioner is admittedly the ex-land lord of the village. He pleaded not guilty to the charge and denied having forcibly removed the crop as alleged by the prosecution and contended that the disputed land is all along in his khas possession and neither the complainant nor his father was ever in possession thereof.

In support of the prosecution case 6 witnesses were examined to prove that the complainant was in possession of the land, that he had raised the crop thereon during the disputed year and that while he was removing the same, the petitioner and his men forcibly took away the crops. On the defence side 3 witnesses were examined to prove the petitioner's case. Both sides have relied on a number of documents to prove their respective cases. Both the Courts below on a consideration of the oral and documentary evidence of the case, came to the conclusion that it is the opposite party who is in khas possession of the land and had raised crops thereon during the disputed year and that the petitioner and his men had forcibly taken away the crops. Being of the view that the other accused persons acted under the direction of the petitioner, the trial Court acquitted them and the petitioner alone was convicted.

3. It is urged by Sri R.K. Mohapatra appearing for the petitioner that the Courts below in arriving at their finding on the question of possession, have overlooked certain discrepancies in the evidence of prosecution witnesses and the importance of some of the documents exhibited in the case on behalf of the petitioner. His next contention is that even if it is held that it is the opposite party who is in possession of the land and had raised the crop thereon during the disputed year still it should be held having regard to the circumstances of the case that the petitioner acted in exercise of his bona fide claim of right to the disputed property. After hearing the parties, I feel that neither of these contentions can prevail. The discrepancies in evidence of the prosecution witnesses to which reference has

been made appear to be too trivial and they had been duly noticed and considered by the courts below, and in spite of it they arrived at the conclusion that P. Ws. 1 to 4 who have deposed about possession of the complainant have spoken the truth.

Sitting in revision, I do not find sufficient reasons to interfere with the finding. Exs. 2 and 8 are the appraisement registers relating to the years 1953-59 and 1959-60, the relevant entries in which show that the appraisements were made in respect of the disputed land by the Naib Tahildar in the name -of complainant's father Bancha and rent from the land was also being realised from him. Notices were issued in Bancha's name and Certificate Cases have been filed against him for realisation of rent due on the land. It is true that the amount due from Bancha in Certificate Case No. 281/56-57 relating to the disputed land was paid by the petitioner. The receipt which he obtained shows that the same was in Bancha's name although the petitioner was shown as the person who made the payment. Similarly the petitioner appears to have paid rent for the land on another occasion and obtained the rent receipt Ex. 9 which, however, shows that the receipt is in the name of Bancha.

The complainant has explained that it is he who made over the amounts to the petitioner who was the ex-landlord of the village for payment of the amounts in the Tahsil office, but as the petitioner failed to hand over the receipts to him, he filed the complaint Ex. 1 before the Naib Tahildar, who got the matter enquired into and Exs. 10 and 11 are the reports of enquiry. These reports which have been proved by the Naib Tahildar who was examined on both sides as P. W. 6 and D W. 2 respectively, show that the disputed land was in possession of Bancha, the complainants' father who was also paying rent for the same. His report no doubt mentioned that the petitioner has been claiming the land to be his own, but that there is no justification for the claim and that he is not in possession thereof. In view of the evidence referred to above I have no manner of doubt that the courts below came to the correct conclusion in holding that the complainant is in possession of the disputed land and that he had raised the crop thereon in the year 1963. I am also satisfied on perusing the evidence that the concurrent findings of the courts below that the petitioner and his men had taken away the crop from the possession of the complainant when he was carrying the same in his

cart is also correct.

4. It is against this background that the plea of bona fide claim of right set up by the petitioner has to be examined. The offence of theft consists in the dishonest taking of any moveable property from out of possession of another without his consent. Dishonest intention exists when the person so taking the property intends to cause wrongful gain to himself or wrongful loss to the other. It is true that an act does not amount to theft unless there be not only no legal right but no appearance or colour of a legal right, and bona fide claim of right is always a good defence to a prosecution for theft. The question therefore is whether in this case it can be said that the petitioner who is proved to have taken away the crops from the possession of the opposite party can be said to have a bona fide claim of right to the game. In proof of the contention that the petitioner has a bona fide claim to the land in dispute, reliance is placed on Ex. A which is a petition dated 20th February 1963 filed by the petitioner before the Khasmahal Tahasildar wherein he asserted that he was in possession of the lands, but that; Certificate cases for realisation of rent were being filed against the complainant's father Bincha Das, because the latter had got his name recorded in respect of the same. The petitioner therefore claimed that after necessary enquiry the name might be recorded in respect of the disputed land. This application was filed just a fortnight before the date of occurrence.

Merely because the petitioner was laying a claim to the disputed land, he is not justified in taking away the crop which is proved to have been raised by the complainant on a land on which he is proved to be in actual possession. The petitioner relies on the decision of the Supreme Court in *Ghandi Kumar Das Karmarkar v. Abanidhar Roy* : 1965 CriLJ496 , That was a case which related to carrying away of fish by the accused from a fishery of which the complainant was in possession. It was, however, found that there was a dispute between the parties in the Civil Court regarding the fishery. The accused persons were originally tenants on the fisheries, but against them an ex parte decree was obtained by one Sailesh Chandra Banerjee who after getting possession of the same through Court leased out the fishery to the complainant, who thereafter reared fish in the tank. On the application of the accused and others, this ex parte decree was set aside

and it is some time thereafter that they caught fish in the tank and they were prosecuted for theft. In view of these facts the Supreme Court held that the circumstances undoubtedly were such that the appellants might well have thought that by reason of the ex parte decree being set aside their possession stood restored and therefore, dishonest intention cannot be imputed to them. The facts of that case therefore are clearly distinguishable.

In a case like the present one where the alleged theft consists in the removal of crop grown on the land, the most vital question to be investigated is as to which of the parties had grown the crop and a decision of this point in the majority of cases, would enable the Court to come to a definite conclusion as to whether the claim of the accused is made in good faith or is a mere pretence. Where it is proved that the complainant is in possession of the land and had grown the crop and the accused had removed the same, it is clear that thereby the accused had caused wrongful gain for himself. Whatever may be the nature of the claim to the land itself he has no right to the crop grown by another at his cost, Removal of crops in such circumstances constitutes theft and the plea that it was done in exercise of his bona fide claim of right to the property cannot be entertained : (1965) 31 Cut L T 601 at p 679 and 749. I am satisfied that in the present case the plea put forth by the petitioner that he had a bona fide claim of right to the crop cannot be accepted.

5. The application fails and is dismissed.