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Johri Vs. the State

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Court : Rajasthan

Decided On : Oct-15-1969

Reported in : AIR1970Raj203; 1970CriLJ1259

Judge : L.S. Mehta, J.

Acts : Indian Penal Code (IPC), 1860 - Sections 429

Appeal No. : Criminal Revn. No. 271 of 1968

Appellant : Johri

Respondent : The State

Advocate for Def. : A.K. Mathur, Dy. Govt. Adv.

Advocate for Pet/Ap. : P.N. Dutt, Adv.

Judgement :
ORDER

L.S. Mehta, J.

1. On June 16, 1966, the complainant Ratna's cow entered the house of the accused John at about noon. This led to altercations between Ratna and Johri. The accused Kishanlal and Rewaria sided Johri. The accused Johri is said to have thrown a stone towards Ratna. The stone accidentally fell on Ratna's calf tethered

nearby as a result of which it sustained an injury on its nasal region and died soon after. A report of this incident was made at the police station, Rajgarh, district Alwar. The police investigated the matter and put up a challan against the accused Johri, Kishan and Rewaria for offences under Sections 429, 448 and 323, I. P. C., in the Court of the Munsiff Magistrate, Rajgarh (Alwar), The prosecution examined six witnesses, including P.W. 5, Veterinary Assistant Surgeon, Dr. Parmeshwar Sahai.

The accused denied to have committed the offence in their statements recorded under Section 342, Cr. P. C. They did not produce any evidence in their defence. The trial Court by its judgment dated January 29, 1968, acquitted the accused Kishanlal and Rewaria of all the charges. He also acquitted Johri for offences under Sections 448 and 323, I. P. C. He, however, convicted Johri under Section 429, I. P. C., and sentenced him to rigorous imprisonment for two months and to pay a fine of Rs. 50, in default to further suffer rigorous imprisonment for 15 days. An appeal was taken against that judgment by the accused Johri in the Court of Sessions Judge, Alwar. The appellate Court by its judgment, dated May 9. 1968, partially accepted the appeal and, while maintaining the conviction of the appellant under Section 429, I. P. C., reduced the substantive sentence of two months rigorous imprisonment to one till the rising of the Court and kept the sentence of fine of Rs. 50 intact. Hence, this revision.

2. Learned counsel for the petitioner submits that the judgment of the Court below is in direct conflict with the provisions of Section 429, I.P.G., as the prosecution has failed to bring home intention or knowledge of the accused to commit mischief.

3. In this case from the statement of P.W. 2 Parbhata, P.W. 3 Kanni and P.W. 4 Ratna, it is clear that when Ratna's cow entered Johari's house, there were altercations between Ratna and Johari. The cow was driven out by Johari. Ratna's calf was also found tethered on Ratna's 'Chabutari'. The calf was untied by John. Ratna objected to this and again tied the animal Thereupon John wanted to pelt stones towards Ratna, but accidentally the stone fell on the calf on its nasal region, resulting in its death.

4. Section 429, I. P. C., necessitates three things: (1) intention or knowledge of likelihood to cause wrongful loss or damage to the public or to any person, (2) causing the destruction of some property or any change in it or in its situation, and (3) such change must destroy or diminish the property mentioned in the section itself. In this case, evidence shows that the calf died as a result of the stone falling upon it accidentally. The question remains whether it should be inferred from the circumstances of the case that the accused had had the intention or knowledge of likelihood of causing wrongful loss or damage to the public or to any person. There is not an iota of evidence on the record from which such an intention or knowledge can be gathered. The only evidence is that the accused wanted to throw stone towards Ratna and not towards the calf with a view to cause wrongful loss or damage to Ratna. Since the first and the most important ingredient of the offence under Section 429, I.P.C., is totally absent, the Court below went wrong in holding that Section 429, I.P.C., was applicable to this case.

5. In Arjun Singh v. The State. 1957 Raj LW 642 = (AIR 1958 Raj 347), it has been observed by this Court:

'In order to prove an offence of mischief, it is necessary for the prosecution to establish that the accused had an intention or knowledge of likelihood to cause wrongful loss or damage to the public or to any person.'

It has further been observed in this case that if an animal is killed accidentally, whatever may be the responsibility of the accused to compensate its owner for the loss of property caused to him in a Civil Court, it cannot be said with any justification that he committed a criminal offence under Section 429, I. P. C. A Division Bench of the Saurashtra High Court consisting of Shah, C. J. and Baxi, J., reported as Bhagwan v. State, AIR 1953 Sau 158, has held that the offence of mischief under Section 429, I. P. C., is committed if the offender commits mischief by killing, poisoning, maiming or rendering useless any buffalo, etc. Under Section 425, I. P. C., a person is said to commit mischief with intent to cause or knowing that he is likely to cause wrongful loss to a person causes the destruction of any property. The existence of the requisite intention or knowledge is, therefore, an essential -ingredient to the offence and the accused cannot be convicted under

Section 429, I.P.C., unless it is established that the act of killing, etc., was with the requisite intention or knowledge.

There is another relevant citation found in Criminal Revision Case No. 434 of 1901 = 1 Weir 502, in the matter of Obammal, accused. In that case the accused Obammal was convicted under Section 429, I.P.C., and sentenced to pay a fine of Rs. 20 or, in default, to undergo rigorous imprisonment for 20 days. The mischief consisted in throwing a stone at a young buffalo and thereby causing its death. The stone was thrown to drive the animal out of the backyard and the animal after running some distance fell down and died. The prosecution witnesses stated that the accused threw a brick at the buffalo and caused its death. There was, however, nothing to show that the accused had in throwing the stone, any intention to cause injury to the animal or reasonable cause to suppose that loss or damage was likely to be caused. The Madras High Court held that in these circumstances the conviction was wrong.

6. In this case, as has been said above, there is nothing to show that the accused had in throwing the stone intention to cause injury to the animal or that he bad the knowledge that his act would result in damage to the complainant Ratna. There is also no evidence to suggest what the size of the stone was. The sole intention of the accused appears to have been to throw a stone towards Ratna. The stone accidentally fell upon the calf. Under these circumstances, the conviction made by the Court below was bad in law.

7. In the result, the conviction of the accused Johri is set aside and he is acquitted of the offence under Section 429, I. P. C. The amount of fine, if levied, must be refunded to him.

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