

State of Rajasthan Vs. Daulat Singh

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Court : Rajasthan

Decided On : Apr-26-2001

Reported in : 2001CriLJ3464

Judge : Sunil Kumar Garg, J.

Acts : Code of Criminal Procedure (CrPC) - Sections 313; [Indian Penal Code \(IPC\), 1860](#) - Sections 147, 427, 441 and 447

Appeal No. : Criminal Appeal No. 279 of 1993

Appellant : State of Rajasthan

Respondent : Daulat Singh

Advocate for Def. : B.S. Rathore, Adv.

Advocate for Pet/Ap. : R. Rurohit, P.P.

Disposition : Appeal dismissed

Judgement :

Sunil Kumar Garg, J.

1. This appeal has been filed by the State of Rajasthan against the judgment and order dated 10-12-1992 passed by the learned Munsif and Judicial Magistrate, 1st Class, Sirohi in Criminal Case No. 575/86 by which the learned Magistrate

acquitted the accused-respondents for the offence under Sections 147,447 and 427, I.P.C.

2. It arises in the following circumstances :

(i) On 7-7-1986, at about 2 p.m., PW 6 Jabar Singh lodged a written report Ex. P. 8 in the Police Station, Kotwali, Sirohi, before PW 8 Sabal Singh stating that he had already made a report on 5-7-1986 against the accused respondents about theft and these accused persons again, in the night at 12, destroyed the crop of Bazri and thus, action be taken against them.

(ii) On this report, the police chalked out a FIR Ex. P/9 and investigation was started.

(iii) After usual investigation, a challan was filed against the accused persons in the Court of Magistrate for offences under Sections 147, 447 and 427, I.P.C.

(iv) The learned Magistrate on 8-12-86 framed charges for offence under Sections 147,447 and 427 I.P.C. against the accused respondents who pleaded not guilty and claimed trial.

3. During trial, prosecution examined as many as 10 witnesses in support of its case and the statements of accused were recorded under Section 313 Cr.P.C. and accused respondent Daulat Singh has been examined as D.W. 1 in defence.

4. After conclusion of the trial, the learned trial Judge has acquitted the accused respondents for the offences under Sections 147, 447 and 427, I.P.C. inter alia holding that:

i) A dispute over possession over the disputed property is going on between the complainant party and accused party and, therefore, it cannot be said that the accused respondents formed unlawful assembly.

ii) That on the point of possession, there is dispute between the parties. The complainant party asserts its claim, while the accused respondents assert their claim.

iii) Since 1/2 of the land is in the khatedari of accused-respondent and in these circumstances, if there is entry, it does not amount to trespass and same can be said to be bona fide entry.

5. In this appeal, it has been argued on behalf of the State that judgment passed by the learned Magistrate is based on surmises and conjectures and the learned Magistrate has not read the prosecution evidence correctly and, therefore, the order of acquittal, passed by the learned Magistrate should be set aside.

6. On the other hand, the learned counsel for the accused-respondents opposes the contention raised by the learned P.P. and submits that the judgment and order passed by the Magistrate is based on correct appreciation of evidence and the same does not call for interference by this Court.

7. I have heard both.

8. In my opinion, there is no force in this appeal and it is liable to be dismissed because of the following reasons :

i) There is ample evidence to support the reasoning given by the learned Magistrate in his judgment dated 10-12-92. P.W. 1 Moti Singh has clearly admitted in his cross-examination that a dispute between the complainant party and accused party is going on with regard to the disputed land. Similar is the statement of P.W. 2 Ishwar Singh and P.W.6 Jabar Singh who lodged the report Ex. P/8 and he has himself admitted that from the year 1960 to 1971, in Jama Bandi, names of accused-respondent Daulat Singh and Chandan Mal were there. He has further admitted that in the year 1972, a dispute arose about the possession of this land between the parties and a case under Section 447, I.P.C. was also registered, but he cannot say, whether the accused, respondent Daulat Singh was acquitted. He has further admitted that since 1972 to 1986, litigation was going on between him and accused-respondent Daulat Singh over the possession of the disputed land.

ii) P.W. 8 Sabal Singh is Investigating Officer of the case and he has admitted in his cross-examination that in Khasra Girdawari Ex. D/2 which he took from the Patwari, name of accused-respondent Daulat Singh is entered as Khatedar.

Similar is the statement of P.W. 9 Jeevan Lal and P.W. 10 Tulsi Ram. Thus, there is ample evidence to hold that there is dispute between the parties over the possession of the disputed land and in these circumstances, entry of accused-respondents over the disputed land cannot be said to be criminal trespass and the learned Magistrate has rightly acquitted all of them.

9. In order to satisfy the condition of Section 441, I.P.C. it must be proved that the person entered in possession over the premises with an intent to commit an offence. Mere occupation even if illegal cannot amount to criminal trespass as held by Hon'ble Supreme Court in the case of Smt. Kanwal Sood v. Nawal Kishore reported in AIR 1983 SC 159 : (1983 Cri LJ 173). From this point of view no case for criminal trespass or for forming an unlawful assembly can be made against the accused respondents. Hence it can be said that the findings given by the learned Magistrate are based on correct appreciation of evidence and this appeal is liable to be dismissed.

10. So far as accused-respondent Bhanwar Singh is concerned who died during pendency of this appeal, his appeal has already been abated by this Court by order dated 16-3-99.

11. Accordingly, the present appeal is dismissed after confirming the judgment and order dated 10-12-92 passed by learned Munsif and Judicial Magistrate, 1st Class, Sirohi in Criminal Case No. 575/86.