

Executive Engineer, Nadia Rivers Division Vs. Ashutosh Saha

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Court : Kolkata

Decided On : Feb-13-1925

Reported in : AIR1925Cal921,(1925)ILR52Cal573

Judge : Newbould and ;B.B. Ghose, JJ.

Appellant : Executive Engineer, Nadia Rivers Division

Respondent : Ashutosh Saha

Judgement :

Newbould and Ghose, JJ.

1. We are unable to agree with the learned Sessions Judge that, in order to support a conviction under Section 78 of the Bengal Embankment Act of 1882, on the ground that the accused by any wilful act destroyed or diminished the efficiency of an embankment, it is necessary that there should be a finding that the accused acted mala fide. This section of the statute appears to make punishable acts endangering embankments even when the offender had no mens rea. The learned Sessions Judge appears to have read the section as if the words were 'wilfully destroys or diminishes the efficiency of such embankment.' The qualification is not in respect of the ultimate result of the act, but the act itself. In this case it cannot be denied that the petitioner wilfully excavated and extended his tank, and it is found that the result of that was to injure the public embankment. This is sufficient to support the conviction. Let the papers be returned.

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