

Netal Das and ors. Vs. the State

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Court : Kolkata

Decided On : Feb-11-1975

Reported in : 1975CriLJ957

Judge : R. Bhattacharya, J.

Appellant : Netal Das and ors.

Respondent : The State

Judgement :

ORDER

R. Bhattacharya, J.

1. These two revisional applications have been heard together as they arise out of the same judgment and order passed by the Sessions Judge, Mid-nanore in Criminal Appeal No. 65 of 1974. The application No. 725 before this Court has been filed by Netai Das. Go-peswar Kali, Nagen SenaDati and Chitta-ranjan Shit, the accused persons, against the judgment by which they have been acquitted of the charge under Section 379 of the Indian Penal Code but the conviction under Section 143. Indian Penal Code was confirmed and the order of sentence passed against them has also been upheld. In the other Appln. No. 837 of 1974 the informant at whose instance the case was started has sought to set aside the order of acquittal passed by the appellate court below.

2. In short, the case of the prosecution was that the accused persons alone with many others formed an unlawful assembly with the common object of reaping the paddy from the land of Radha-bai Rathi and thereafter actually took away the paddy from her land. The accused persons wanted to say that they were not guilty and that as they supported the cause of one Tajuddin, a bargadar under Radhabai, the false case was started. The allegation about unlawful assembly for the theft of paddy has been denied. The learned Magistrate after trial found Netai Das and three others, the petitioners before this Court in the Application No. 725, guilty under Section 379, Indian Penal Code and also under Section 143 of the Indian Penal Code and he sentenced each of them to pay a fine of Rs. 100/- on each count and in default they are to suffer rigorous imprisonment for one month on each count of charges.

3. In each of the cases Mr. N. C. Banerjee has appeared for the informant Ahindra Kumar Chakravarty. Mr. Ramendra Nath Banerjee has appeared on behalf of the accused-petitioners and for the State Mr. Prasanta Kumar Bandopadhyay appeared to support the judgment of the appellate court.

4. With regard to the order of acquittal in respect of the charge under Section 379 of the Indian Penal Code, it has been submitted by Mr. N. C. Banerjee that the learned Sessions Judge appreciated the evidence on and the principles of law involved therein and that his finding that the case under Section 379, Indian Penal Code for the theft of paddy belonging to Rathi has not been proved is most unreasonable and perverse in view of the evidence on record. For this purpose I have been taken, through the judgment of the learned Sessions Judge as also the evidence of the witnesses. In a revisional application against the order of acquittal, the High Court will not interfere with the finding of the fact unless it is unreasonable or perverse or without evidence. The question would be before this Court whether or not in coming to the impugned decision the learned Court below acted without jurisdiction or failed to apply proper law in the matter. From the judgment it appears that the learned Sessions Judge discussed the evidence of all the witnesses one after another and considered the circumstances of this case and after discussion he found that the witnesses who sought to prove the theft of paddy did not specifically say from which of the plots belonging to Rathi the paddy

was actually stolen away. He was not satisfied as to the identity of the plot from which paddy was taken away. Moreover, there was the evidence that during the relevant period there was no paddy on the land of Rathi in the village Choulisole. On consideration of the evidence on record the learned Sessions Judge had a reasonable doubt as to the taking away of the paddy of Rathi from her land in Choulisole. Practically speaking as the witnesses could not specify the actual plot of land from which the paddy has been alleged to have been taken away the learned Sessions Judge could not come to a final decision as to whether or not there was the theft of paddy. I do not think in view of the facts and circumstances that the decision of the learned Sessions Judge in respect of the charge under Section 379 of the Indian Penal Code is unreasonable.

5. With regard to application of the- accused persons in the revisional case No. 837 the question again would be whether the finding of the learned Sessions Judge below as to the unlawful assembly referred to in the charge under Section 143, Indian Penal Code is illegal and perverse or without any evidence or against the evidence. It has been argued by Mr. R. N. Banerjee, the learned Advocate for the accused-petitioners, that when the petitioners had been found not guilty of the charge under Section 379, Indian Penal Code they ought not to have found guilty under Section 143 of the Indian Penal Code where the allegation was that they along with others formed an unlawful assembly having the common object to commit theft of paddy of Radhabai Hathi. The charge is that the accused persons were members of an unlawful assembly at Choulisole to commit theft of paddy of Radhabai Rathi and thereby they committed an offence punishable under Section 143, Indian Penal Code. It is, therefore, to be seen if the accused persons were members of an unlawful assembly as mentioned in the charge in mouza Choulisole and whether that unlawful assembly had the common object of committing theft of paddy of Radhabai Rathi. It is not necessary under law that in all cases if unlawful assembly with an unlawful common object, the said common object must be translated into action or be successful. In many cases although requisite number of persons had the unlawful common object and with that common object formed unlawful assembly yet that common object might have been foiled or unsuccessful due to some reason or other. But that failure cannot be the reason to hold that there was no unlawful assembly as defined under the

Indian Penal Code if the essential ingredients of the offence under Section 143, Indian Penal Code are proved. In this respect, the learned Sessions Judge discussed the evidence and he was satisfied from the evidence and circumstances and also the conduct of the members of the assembly that they wanted to unlawfully reap the paddy of Radhabai Rathi and that for the purpose they congregated at Choulisole with lathis, bow, arrows and tangis shouting that they would cut the paddy of Radhabai. They were proceeding to the paddy field of Radhabai. He was also satisfied that the unlawful assembly was formed in mouza Choulisole. Simply because the learned Sessions Judge gave benefit of doubt to the accused in respect of the charge under Section 379 of the Indian Penal Code it cannot be argued that there could not have been any unlawful assembly having common object to reap the paddy of Radhabai, Persons may be guilty under Section 143, Indian Penal Code even though the common object is unfulfilled. The argument of Mr. Banerjee in this respect is untenable.

6. An attempt has been made by Mr. Banerjee again to argue that the conviction under Section 143, Indian Penal Code cannot be sustained because only four persons have been convicted. The evidence in this case is that there was an unlawful assembly consisting about 100 and 150 persons with the common object as stated in the charge and although the petitioners Netai Das and three others were in the assembly along with many others having such common object, that common object has been ascertained by the learned Sessions Judge from the evidence and the circumstances and the conduct of the persons of the assembly. Therefore, the argument of Mr. Banerjee-as advanced is again unsustainable. The finding of the learned Sessions Judge is not unreasonable or perverse. Neither do I find any error in law. There is no reason to interfere with the conviction and sentence under Section 143, Indian Penal Code.

7. In the result, both the applications fail and the Rules stand discharged.