

Form No. J (1)

IN THE HIGH COURT AT CALCUTTA
Criminal Revisional Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Biswajit Basu

C.R.A. No. 200 of 1992

Raisuddin
versus
Younus Ali & Ors.

For Respondent
Nos. 1, 3, 4 & 5 : Mr. Kallol Mondal,
Mr. Souvik Das,
Mr. Anamitra Banerjee

For State : Mr. Bidyut Kumar Roy,
Ms. Sima Biswas

Heard on : 10.05.2022.

Judgment On : 10.05.2022.

Biswajit Basu, J.

1. This is an appeal by the complainant upon leave being obtained under Section 378 (4) of the Code of Criminal Procedure, 1973 and it is directed against the order of acquittal passed by the Sub-Divisional Judicial Magistrate at Islampur, Uttar-Dinajpur in Case No. 323-C of 1988/Trial No. 314 of 1989 under Sections 147, 379 and 411 of the Indian Penal Code dated March 27, 1992.

2. The Administrative Notice was issued, and as per the report dated February 05, 2019 of the Superintendent (Criminal Section), High Court (Appellate Side), Calcutta, the appellant and the respondent no. 2 have died.

The appeal therefore has abated as against the respondent no. 2 but the appeal shall continue notwithstanding the death of the appellant.

3. This Court under the aforesaid circumstances has appointed Mr. Krishan Ray, learned counsel, to represent the appellant and Mr. Kallol Mondal, learned counsel, to represent the respondent nos. 1, 3, 4 and 5 from the list of Learned Advocates of the Calcutta High Court Legal Services Committee (Criminal). Appointment of Mr. Mondal and Mr. Ray may be regularized. Mr. Bidyut Kumar Roy, learned advocate appears on behalf of the State.

5. The complaint is that on July 23, 1988 at about 9 a.m. the accused persons being armed with deadly weapons entered into the case land and felled one Sishu tree belonging to the complainant and also removed two trees and another two Sishu trees kept lying on the said land. The complainant had sustained loss of Rs. 1,500/- for the said acts of the accused persons. The defence of the accused persons was that the land did not belong to the complainant and they were falsely implicated.

6. The accused persons were brought to the trial on the charge under Sections 147/379/411 of the Indian Penal Code and were examined under Section 246 (2) of the Code of Criminal Procedure. The prosecution to prove the charge examined as many as nine witnesses. The accused persons were also examined under Section 313 of the Code of Criminal Procedure.

7. The learned Magistrate on scrutiny of the materials on record and after screening the evidences found that there is a dispute over the possession and title of the land wherefrom the said Sishu trees were removed after felling down. In view of such nature of the dispute, the Magistrate opined that it is difficult to hold that the accused persons have committed the alleged offence and accordingly acquitted them from the charges and set them free.

On careful examination of the materials on record and the evidence, this Court found that there is a dispute with regard to the title of the said land, under such circumstances the learned Magistrate has not committed any error in acquitting the accused persons. The impugned judgment and order, therefore do not call for any interference.

The criminal appeal being C.R.A. 200 of 1992 is accordingly dismissed without any order as to costs.

The department is directed to send down the Lower Court Records immediately.

Urgent Photostat certified copy of this judgment, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

(BISWAJIT BASU, J.)

(S.K)