

## CRIMINAL REVISION.

Before Mr. Justice Caspersz and Mr. Justice Ryves.

1909  
May 20.

DURGA TEWARI AND OTHERS

v.

EMPEROR.\*

*Theft—Criminal Breach of Trust—Moveable or immoveable Property—Entrustment of Land with standing Crops—Cutting and disposing of Crops—Penal Code (Act XLV of 1860), ss. 379, 405.*

Where certain land, on which there was a standing crop of paddy, was entrusted to the accused to take care of and watch till the paddy was ripe when they were to give notice to the factory people who would reap it :—

*Held*, that by cutting the crops themselves and disposing of the same, the accused were guilty of theft if not of criminal breach of trust.

*Jugdawn Sinha v. Queen-Empress* (1) and *Reg. v. Girdhar Dharamdas* (2) distinguished.

*Queen-Empress v. Bhaqu* (3) followed.

ONE Sunder Lal, the munshi of the Materia factory, cultivated some 18 bighas of land in village Kuari, but surrendered them with the standing crops to the factory in July 1908. In September the manager of the factory placed the lands on which the crops were growing in charge of a *punchayet*, consisting of the accused, under a *parwana* with directions to look after the lands and to report, when the paddy was ripe for cutting, to the factory people who would reap the crops. The lower Courts found that the accused, as members of the *punchayet*, were entrusted with both the lands and the crops, and that they cut and removed the paddy to their granaries and disposed of the same afterwards. The accused were tried and convicted by the Subdivisional Officer of Bettiah, on the 17th January 1909, under section 406 of the Indian Penal Code and sentenced the petitioner, Durga

\* Criminal Revision No. 436 of 1909, against the order of D. H. Kingsford, Sessions Judge of Tirhoot, dated March 16, 1909.

(1) (1895) I. L. R. 23 Calc. 372.

(2) (1869) 6 Bom. H. C. 33.

(3) (1897) Ratanlal, Unrep. Cr. C. 928.

Tewari, to six months' rigorous imprisonment and a fine of Rs. 1,000, and the petitioners, Ram Sah and Jugdis Narain, to four months' rigorous imprisonment and a fine of Rs. 500 each. An appeal against the order of the Magistrate was dismissed by the Sessions Judge of Tirhoot on the 16th March. The petitioners then moved the High Court and obtained this Rule to set aside the conviction and sentences on the ground that the property contemplated in section 406 of the Penal Code is moveable property, whereas the property entrusted to the petitioners was standing crops.

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*Babu Atul Krishna Roy*, for the petitioners. The accused were entrusted with the lands and the crops growing on them. Standing crops are immoveable property: *Queen-Empress v. Obayya* (1), and criminal breach of trust cannot be committed in respect of immoveables: *Jugdow Sinha v. Queen-Empress* (2), *Reg. v. Girdhar Dharamdas* (3) and *Queen-Empress v. Bhagu* (4). The fines ought to be directed to be paid to the complainant under section 545 of the Criminal Procedure Code, and not to Government.

CASPERSZ AND RYVES JJ. This is a Rule on the District Magistrate to show cause why the conviction and sentences of the petitioners should not be set aside on the ground that the property contemplated in section 406 is moveable property, and the property entrusted to the petitioners was standing crops; on the authority of the case of *Jugdow Sinha v. Queen-Empress* (2), and also why the sentences should not be reduced.

It has been found by both Courts that 18 bighas of land on which was then standing a crop of paddy were entrusted to the petitioners to take care of and watch until the paddy was ripe when they were to give notice to the factory people who would cut it. When the paddy was ripe the petitioners themselves cut the crops and disposed of the same. On these

(1) (1898) I. L. R. 22 Mad. 151.

(2) (1895) I. L. R. 23 Calc. 372.

(3) (1869) 6 Bom. H. C. 33.

(4) (1897) Ratanlal. Unrep. Cr.

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findings both the Courts concurred in convicting the petitioners under section 406 of the Indian Penal Code.

In this Court it has been contended that, inasmuch as the property was standing crops at the time when the trust was created, no offence under section 406 of the Indian Penal Code could have been committed in relation to that crop and the case of *Jugdorn Sinha v. Queen-Empress* (1) has been relied upon, as also the case of *Reg. v. Girdhar Dharamdas* (2). In the former case the subject of trust was land; in the latter case, a house. Reliance is also placed on the case of *Queen-Empress v. Bhagu* (3). The facts of this case are very similar to the case now before us. In that case a forest guard, who had been engaged to watch a Government forest, had been convicted of an attempt to commit criminal breach of trust, because he had allowed a timber merchant improperly to cut and remove some trees from the forest. It was held in revision in that case that it was "extremely doubtful if the forest guard could have been in any manner entrusted with the trees of the forest or with any dominion over those trees. He seems to have been merely a watchman employed to guard the trees and to prevent any injuries being done to the forest. The fact that he omitted to do his duty would hardly, we think, amount to criminal breach of trust." The learned Judges go on to say: "Moreover, the trees are immoveable properties, and according to good authority criminal breach of trust could not be committed in respect of them." Reference is then made to the cases we have already quoted. The learned Judges, therefore, held that section 406 was inapplicable to the facts of that case, and altered the conviction to one under section 379. In this case the property which was entrusted to the accused was a crop of paddy which the petitioners had to guard until it had become ripe. At that time, no doubt, it was immoveable property. When they cut the paddy it became moveable property, but it still remained entrusted to them. If they, therefore, improperly

(1) (1895) I. L. R. 23 Calc. 372.

(2) (1869) 6 Bom. H. C. 33.

(3) (1897) Ratanlal, Unrep. Cr. C. 928.

disposed of it, it seems to us that they committed criminal misappropriation within the meaning of section 405. If, on the other hand, the lower Courts are not right in holding, as we are inclined to think, that the crops were entrusted to the petitioners, within the meaning of section 405, then for the reasons given in the last quoted Bombay case their conviction under section 379 would not be improper. The property became capable of theft the moment it was severed from the ground: *vide* Explanation (2) to section 378 of the Penal Code. We have been asked to reduce the sentences. It seems, however, from the explanation of the Magistrate that a very considerable amount of paddy, probably of the value of Rs. 1,000, was removed. We, therefore, do not think that the terms of imprisonment are too severe.

With regard to the fines, we direct that if they, or any portion thereof, be realised, the amount will be awarded as compensation, under section 545 of the Criminal Procedure Code, to the manager of the factory.

The petitioners must now surrender to their bail and serve out the remaining portions of their sentences. The Rule is discharged.

*Rule discharged*

E. H. M.

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