

(1948) 09 AHC CK 0020

Allahabad High Court

Case No: None

Bisheshar and Others

APPELLANT

Vs

Rex through Bachcho Lal Pandey

RESPONDENT

**Date of Decision:** Sept. 21, 1948

**Acts Referred:**

- Penal Code, 1860 (IPC) - Section 147, 149, 325

**Citation:** AIR 1949 All 213 : (1949) CriLJ 322

**Hon'ble Judges:** Wanchoo, J; Agarwala, J

**Bench:** Division Bench

**Final Decision:** Dismissed

### Judgement

@JUDGMENTTAG-ORDER

1. This is an application in revision against an order of the learned Sessions Judge of Basti dismissing the appeal preferred by the applicants.

2. The applicants were convicted by a Special Magistrate first class of Basti for offences under 8s. 325 and 323 read with Section 149, Penal Code, and the sentence passed against them was only a sentence of fine under all the sections. In appeal by the applicants to the learned Sessions Judge, the convictions and sentences were slightly altered. He convicted the applicants u/s 147 Penal Code, also and fined them Us. 15 each and adjusted the fine in such a way as not to enhance the total amount of fine imposed by the Magistrate.

3. In village Pachmarhi District Basti a parti land, measuring 18 bighas katcha was owned by the zemindars including the complainant Bachulal. The applicants claimed to have obtained a lease of this land from the zamindar. Bachulal claimed to have held 8 bighas of this land as a statutory tenant from 1351 p. On 9th October 1946 Jaggu, one of the applicants made an application before the Court that his uncle Gurdutt and other tenants of the village had obtained this parti land for cultivation

from the zamindar and that they were being prevented by Bachulal from cultivating it. No effective order was passed on this application. Four days later, on 13th October 1946 at 2 p. M., all the accused armed with lathis went to the house of Baahulal and asked him to give up ploughing the parti land. When he refused to yield to the wishes the accused Ramcharak, Bishesbwar, Gurucharan, Jaggu, Jagarnath, Labi and Chhangur beat him with lathis. He raised an alarm. His brother Gointi who was inside the house came out and when he began to remonstrate with the accused he was also beaten by Manik, Durogba and Mangrey. Sheotihal the ploughman of Bachulal also came up there. He too was beaten by Jjocha, Janki and Jhingan. All the other accused-surrounded these three persons but they did not actually beat anybody. After this the accused proceeded towards the parti land shouting that they would stop its being ploughed by Bachulal. Bajaram, uncle of Bachulal and the labourers engaged in ploughing ran away leaving eight bullocks in the field. The accused drove the bullocks to the cattle pound.

4. Bachulal, his brother Gomti and his servant Sheotihal were medically examined; Gomti had three abrasions, Sheotihal had three injuries including a fracture of tibia with swelling from knee to foot. This injury was grievous. Bachulal received 16 injuries—one contusion, 13 abrasions and diffused swelling at 2 places. The contusion involved a fracture of an ulna bone-It was grievous.

5. The accused denied the charge and said that they had been falsely implicated on account of enmity. The prosecution examined 32 witnesses in all. Both the Courts below have held the case to be fully proved. Their findings are supported by the evidence on the record. Nothing has been shown to us as to why we should interfere with the findings recorded by the Courts below.

6. We see, therefore, no force in the revision preferred on behalf of the accused. It is rejected.

7. There is, however, a revision filed by the Complainant Bachulal in which he prays that the sentence imposed upon the accused is contrary to law and is inadequate, having regard to the injuries caused to him, his brother Gomti and his servant Sheotihal, When this revision was being argued by Dr. K. N. Malaviya the Counsel appearing for Bachulal complainant, Mr. David objected and urged that a complainant had no right to be heard. He cited *In re Nagji Dula*, AIR 1927 321 (Oudh) and *Hanuman Prasad v. Mathwa Prasad* AIR 1935 Oudh 421 : 35 CRILJ 118).

8. We have examined these cases and find that the observations on which reliance has been placed were all made obiter dicta, because in all these Cases the learned Judges considered that no case for enhancement had been made out. On principle we do not see why a complainant should be held to have no right to bring to the notice of this Court that the case was one in which a higher punishment should have been awarded. Even a stranger may invoke the revisional jurisdiction of this Court: vide *Shailabala Devi Vs. Emperor*. So far as the question of right of audience is

concerned nobody has a right to be heard in a revision. It is purely discretionary with the Court whether it will hear any party in a revision or not, and in this respect it differs from an appeal; see [Emperor Vs. Jafar Khan and Others,](#) . But in the ordinary course this Court does hear counsel appearing in revisions and in that respect a complainant can be in no worse position.

9. The rights of a complainant are only subordinate to the rights of the Crown and it is for this reason that when the Crown takes up a case and the Government Advocate or other counsel appears on its behalf a complainant or his counsel has no right of audience unless permitted by the, counsel appearing for the Crown (s. 493, Cr. P. C ). But where the Crown is taking no interest in any particular matter the complainant can take action if not prevented by law from doing so. An illustration of a case in which a complainant is prevented from taking action may be found in the power to appeal from an order of acquittal. This power is reserved for the Crown alone and as such a complainant has no power. The Criminal Procedure Code does not, however, prevent a complainant from applying in revision. We, therefore, think that the complainant may be heard in support of his revision application.

10. Now, coming to the merits of the application for enhancement, we find that the accused were convicted under 8, 325, Penal Code. The punishment provided for an offence under this section is a sentence of imprisonment extending upto seven years and the sentence of fine can only be in addition to the sentence of imprisonment and not in substitution thereof. The lower Court was, therefore, undoubtedly in error in awarding only a sentence of fine.

11. Usually when a Court finds that although the offence committed falls u/s 325, Penal Code, yet it does not call for a sentence of imprisonment, it seeks to conform to the letter of the law by awarding a sentence of imprisonment till the rising of the Court. In this case, even this was not done. A Court sitting in revision is not bound to interfere even though an illegality has been committed by the lower Court if it finds that substantial justice has been done. In this case we find that the accused armed with lathis reached the house of the complainant and mercilessly beat him and also those who came to intervene. In the case of those persons, therefore, who actually beat the complainant and the intervenors we think that a sentence of imprisonment was called for. In the case of those who merely surrounded the complainant but took no part in the beating, substantial justice may be taken to have been done by the imposition of a sentence of fine only.

12. We, therefore, accept this revision in part and enhance the sentences of Earn Harak, Bisheshar, Gurcharan, Jaggu, Jagarnath, Lalai, Manik, Darflgha, Mangrey, Lochan, Janki and Jhingan and sentence them to undergo a period of three months" rigorous imprisonment for the offence u/s 325, read with Section 149, Penal Code, in addition to the sentence of fine of Rs. 85, on each imposed by the lower appellate Court. The other convictions and sentences shall stand. The accused named above shall be taken into custody at once and shall serve out the sentence imposed upon

them by us.