

(1932) 12 PAT CK 0003

Patna High Court

Case No: Criminal Ref. No. 63 of 1932

Ramchander Rai and others

APPELLANT

Vs

Ram Belas Tewari

RESPONDENT

Date of Decision: Dec. 15, 1932

Judgement

1. This is a reference by the Sessions Judge of Shahabad under S. 438, Criminal P.C. The circumstances which give rise to the reference are simple. A complainant started proceedings against four persons and they were put on their trial before the Magistrate under Ss. 379 and 325, Penal Code, it being alleged by the complainant that they had stolen his crop and had committed grievous hurt upon him. The Magistrate as to the charge under S. 379 held as a fact that the accused persons when taking away the portion of the crop which was valued at Rs. 3 only were acting under a bona fide belief that they were entitled to that crop. As to the charge under S. 325 the Magistrate imposed a fine of Rs. 50 and in default rigorous imprisonment for two months. He did not impose any substantive sentence of imprisonment. Thereupon the convicted persons appealed from their convictions under S. 325 to the Sessions Judge and he finding that the sentence of fine only in respect of the conviction under S. 325 was illegal inasmuch as there should have been a substantive sentence of imprisonment has referred the matter to this Court. He has also referred the matter of acquittal under S. 379 and in so doing the learned Sessions Judge has made the mistake of imagining that it was immaterial that the accused persons had a bona fide belief that the crop was theirs if it were not theirs in law. In our opinion on the matter of the acquittal under S. 379 the reference is misconceived. On his finding of fact that the accused persons believed the crop taker, to be theirs the Magistrate was right in acquitting them of a charge of theft for a criminal charge of theft depends not on the question of title but on the question of intention.

2. As regards the erroneous sentence under S. 325, Penal Code, it is perfectly true that a mistake has been made by the Magistrate and that the conviction ought to have involved a sentence, however short, of imprisonment but it is perfectly clear

from an examination of the circumstances and the judgment of the Magistrate that the matter was of a petty character and the sentence of fine actually imposed by the Magistrate is, in the circumstances, adequate punishment. Notwithstanding that the sentence was irregular we shall not interfere under our revisional powers which are intended for the redress of genuine grievances and not of mere formal defects. The reference is rejected.