
(1904) 01 CAL CK 0007

Calcutta High Court

Case No: Rev. No. 1133 of 1903

Nafar Chandra
Bhattacharjee

APPELLANT

Vs

Helaluddin Mondal and
Another

RESPONDENT

Date of Decision: Jan. 26, 1904

Judgement

Ghose, J.

No one appears to show cause against this Rule and the District Magistrate reports that the Deputy Magistrate who tried the case has no cause to show in support of his order. I have, however, looked into the judgment that he pronounced, and it seems to me that, upon the view of facts as found by him, no offence under sec. 430, I. P. C., has been committed by the Petitioners by cutting the dam which had been put up by the complainant across the river with, as it is alleged, the sanction of the canal authorities. The Deputy Magistrate finds that there was flood in the river and the stream which was obstructed by the dam could not fully discharge the water and thus the accumulated water submerged the Surho fields and spoilt the crops and damaged one or two houses." Later on, he says, "the complainant says that the accused persons cut the dam in order to take a supply of water. This is untrue. They cut it to save their crops. Their conduct, however, is reprehensible, but I take a very lenient view of the case because circumstances show there was urgent need of it and I pass a light sentence." On looking into another portion of the judgment it will be found that the Deputy Magistrate does not find that the act of the accused in cutting the said dam was with intent to cause or knowing that he was likely to cause wrongful loss or damage, within the meaning of the definition of the word "mischief" as given in sec. 425, I. P. C. And if this important element which constitutes the offence of mischief is wanting, it is obvious that no offence under sec. 430 could be committed. But, apart from this consideration, it does not appear that the act of the accused did cause any diminution of the supply of water for agricultural purposes, or that the accused knew that it was likely to cause such diminution in future. That being so, I am of opinion that the conviction and sentence under the said sec. 430

cannot be supported. The Rule is accordingly made absolute. The fine, if paid, will be refunded.