

PUNI DEVI & ORS.

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v.

TULSI RAM

(Criminal Appeal No. 263 of 2019)

FEBRUARY 13, 2019

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**[DR. DHANANJAYA Y CHANDRACHUD AND
HEMANT GUPTA, JJ.]**

Penal Code, 1860 – s.379, 427, 447 and 504 r/w s.149 – Criminal trespass and theft – Complainant-respondent alleged that accused persons trespassed into his land, thereafter, they cut and removed the wheat crop from the land and ran away with a bundle of wheat – Trial Court after appreciating evidence on the record came to conclusion that the offence was not established – However, High Court set aside the judgment of the Trial Court – On appeal, held: The evidence indicated that there was a dispute in regard to the land since both the parties were claiming possession and a suit regarding the same was pending between them – On this evidence, Trial Court concluded that there was no cogent evidence to indicate the possession of the complainant over the land – Hence, the entire case of the unlawful cutting of the crop of wheat was rendered doubtful – Trial court had carefully appreciated evidence on the record – High Court was not justified in setting aside the findings of the Trial Court.

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CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 263 of 2019.

From the Judgment and Order dated 20.11.2018/Order on quantum of sentence dated 21.12.2018 of the High Court of Himachal Pradesh at Shimla in Cr. Appeal No. 448 of 2010.

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Ms. Radhika Gautam, Adv. for the Appellants.

The Order of the Court was passed by

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DR. DHANANJAYA Y CHANDRACHUD, J. 1. Leave granted.

2. None appears for the complainant-respondent despite service of notice.

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A 3. This appeal arises from a judgment dated 20 November 2008 of a learned Single Judge of the High Court of Himachal Pradesh by which a judgment of acquittal has been reversed. The appellants were tried for offences punishable under Sections 379, 427, 447, 504 and 506 read with Section 149 of the Penal Code.

B 4. The trial before the Chief Judicial Magistrate, Mandi arose out of a private complaint¹. The case of the complainant (the respondent before this Court) is that he is the owner in possession of land comprised in khasra No. 817 situated at Village Bataur, Illaqa Tungal, Sub-Tehsil Kotli, District Mandi. It was alleged that on 29 March 2007 at about 6.30 pm, the accused formed an unlawful assembly and trespassed into
C the land of the complainant. It was alleged that thereafter they cut and removed the wheat crop from the land. When the complainant along with his daughter and son in law attempted to resist them, it is alleged that the accused abused the complainant and the members of her family. It is alleged that the accused thereafter ran away from the spot with a
D bundle of wheat of the value of approximately Rs 1500.

5. The Trial court during the course of the judgment elaborately analysed the testimony of the three principal witnesses. CW-1, the complainant, deposed that on the day of the incident at about 6 pm when he visited his land, he witnessed the accused cutting the crop of wheat
E from his field. The complainant stated that when he attempted to resist the action, the accused attacked him with a sickle. Subsequently, after abusing the complainant, they ran away from the spot.

6. In the course of cross-examination, the complainant admitted that village Bataur is a large village. The witness was confronted with the fact that no villager had witnessed the occurrence. He admitted that
F he had not furnished any information to the Pradhan or to the members of the Panchayat about the occurrence.

7. CW-2 Meena Devi, who is the daughter of the complainant admitted during the course of the incident that the accused had only abused the complainant and not assaulted him. She admitted that no
G complaint had been made to the police.

8. CW-3 in the course of his cross-examination also admitted that the accused had not been beaten up the complainant, but that there was an altercation. The above evidence, the learned Trial Judge observed,

H ¹ No. 8-II/2007

indicated that there was a dispute in regard to the land since both the parties were claiming possession. It was admitted by CW-2 that a suit was pending in regard to the land in dispute. On this evidence, the Trial court concluded that there was no cogent evidence to indicate the possession of the complainant over the land. Hence, the entire case of the unlawful cutting of the crop of wheat was rendered doubtful. The Trial court observed that no independent witness had been examined. CW-2 and CW-3 who were the daughter and son in law of the complainant also admitted that there was a dispute and that the complainant had not been assaulted. Moreover, there was no cogent evidence to indicate any intentional insult intending or knowing that it would cause the victim to breach the public peace or to commit any other offence had been uttered. For these reasons, the Trial Court came to the conclusion that the offence was not established.

9. The High Court by its impugned judgment re-appreciated the evidence. On perusing the judgment of the High Court, we do not find any application of mind to the basic facet that the High Court was dealing with an appeal against acquittal. There is nothing in the judgment of the learned Single Judge to indicate a perversity of approach. The learned Trial Judge carefully appreciated the evidence on the record. The High Court was not justified in setting aside the well considered findings of the learned Trial Judge. As a consequence, we maintain the judgment of acquittal passed by the learned Chief Judicial Magistrate.

10. The appeal is allowed and the impugned judgment and order of the High Court is set aside.