

## Sidh Nath vs Triloki Nath on 31 March, 1952

**Equivalent citations: AIR1953ALL372, AIR 1953 ALLAHABAD 372**

ORDER

Kidwai, J.

1. This revision application is filed by Lala Sidh Nath against his conviction of an offence under Section 508, Penal Code.

2. The case of the prosecution was that a tamarind tree belonging to the opposite party, Lala Triloki Nath, was cut in August 1948 by the son of Lala Sidh Nath. There was some trouble about it and the tree was allowed to remain where it fell. On 16-9-1949, Lala Sidh Nath removed the tree to his house. On 18-9-1949, Lala Triloki Nath sent his men to the house of Lala Sidh Nath to get back the wood which Lala Sidh Nath had taken. Thereupon, Lala Sidh Nath who was sitting at the house of Raja Sri Bam went to his house, brought a gun and went towards the house of Lala Triloki Nath shouting abuses and inviting him to come out to meet the threat. Raja Sri Ram and Lala Prag Narain tried to stop him but in vain. Thereupon Lala Bhola Nath calmed Sidh Nath down and took away the gun from his possession.

3. A written report of this incident was made at the police station on the next day and the case was started. For the prosecution 6 witnesses of this incident were produced, namely, Lala Triloki Nath (P. W. 1), Lala Prag Narain (P. W. 2), Raja Sri Ram (P. W. 8), Lala Kailash Kishore (P. W. 4), Bhagwandin (P. W. 5) and Daya Shankar (P. W. 6). The trial Court found the offences both under Sections 504 and 506, Penal Code, established and sentenced Lala Sidh Nath to a fine of Rs. 75 in respect of each of the offences.

4. Lala Sidh Nath appealed and the learned Sessions Judge of Unnao set aside the conviction and sentence under Section 504 but maintained the conviction under Section 506.

5. In this revision application the validity of the conviction under Section 506, Penal Code, is also challenged on several grounds.

(1) That the Court itself has found the matter to be a petty one and should, therefore, not have convicted the appellant by reason of Section 95, Penal Code, and (2) That because in fact the applicant did not issue any threats to make the complainant desist from any legal act but whatever abuses of threat he issued were to make the complainant desist from unlawfully removing the wood from his house.

6. With regard to the first contention Section 95, Penal Code, would not apply to the case because that section only applies in a case where the harm likely to be caused is so slight that no person of ordinary sense and temper would complain of such harm. In the present complaint the harm that may have been caused was with a gun and certainly that would not have been so slight as to induce an ordinary person to ignore it.

7. The second point, however, has considerable force. According to the statement of Lala Prag Narain, Lala Sidh Nath was sitting at the house of Raja Sri Ram when his son came and informed him that a number of persons were entering his house and bringing out the wood to take it away. This statement is supported by the report made Ext. 2, which is also to the same effect. Even if it is conceded that Lala Sidh Nath had actually stolen the wood which was in fact the property of Lala Triloki Nath, Lala Triloki Nath could not by his own private action invade the house of Lala Sidh Nath to recover that wood without the necessary search warrant or without police aid. Lala Sidh Nath would be perfectly justified in resisting the invasion. In the present case an invasion of the house was going on and was by the servants of Lala Triloki Nath under his directions. If, therefore, instead of causing injuries or threatening the servants with dire consequences until they desisted from their criminal trespass, Lala Sidh Nath proceeded towards the house of Lala Triloki Nath, under whose orders the invasion was taking place, and threatened him with serious results unless he ordered the invasion off, he cannot be said to have committed an offence. According to the evidence to which I have referred, the wood was still being removed and it is agreed that it was being removed by the servants of Lala Triloki Nath under his orders. The responsibility of the removal was, therefore, on Lala Triloki Nath and it was not an offence on the part of Lala Sidh Nath even to threaten Lala Triloki Nath in order to prevent him from doing an act which was illegal.

8. I may illustrate my meaning by saying that supposing a theft has been committed in a person's house, he is under the law entitled to defend his property and to cause injuries to the thief in preventing the theft. It would not become an offence on the part of the person whose house is being broken into, if instead of starting off by hitting the thief, he gives notice to the thief to drop the articles stolen otherwise he would receive injuries. In the similar way if, instead of starting off by hitting at the servants of Lala Triloki Nath, Lala Sidh Nath went to the master to request or even threaten him to call off his servants from doing an illegal act, his action would not become an offence.

9. I, therefore, allow this application, set aside the conviction of Lala Sidh Nath and the sentence passed upon him. The fine, if realised, shall be refunded.