

ALLAHABAD HIGH COURT

Keshar Singh

Vs.

Rex through Prem Ballabh Joshi

Criminal Ref. No. 1536 of 1948

(Desai, J.)

12.09.1949

JUDGMENT

Desai, J.

1. This is a reference by the Additional Sessions Judge, Kumaun, with the recommendation that the conviction of Keshar Singh, etc., under Section 447, Penal Code, by a Magistrate be quashed. It has been found by the Magistrate, the District Magistrate and the learned Additional Sessions Judge that Prem Ballabh Joshi and Gauri Datt were in possession of a field, that Keshar Singh, etc., had absolutely no connection with it and that they forcibly ploughed it in spite of the protests of Prem Ballabh. The learned Magistrate and the learned District Magistrate did not consider whether the facts made out an offence under Section 447, Penal Code or not. They took it for granted that the offence was made out. The learned Additional Sessions Judge, however, went into the question in detail and was of the opinion that no offence was made out because it was not proved that the intention of Keshar Singh, etc. in committing trespass upon the field was to commit an offence or intimidate or annoy Prem Ballabh and Gauri Datt. He was quite right when he stated that nobody can be guilty of criminal trespass unless he committed the trespass with the particular intention. It is not stated by any of the witnesses that the intention of Keshar Singh, etc. in committing trespass upon the field was either to commit any offence or to intimidate Prem Ballabh, Gauri Datt or their servants. The learned Additional Sessions Judge has observed in his reference that the intention cannot be inferred from the actual or probable result and that the prosecution must prove the actual intention to insult. Unless the man committing trespass gave expression to his intention, it would be impossible to produce direct evidence of the intention. The intention would be in his mind and another person would not know about it. Direct evidence of intention can hardly ever be produced and the intention has in most cases to be inferred from the circumstances. There is a well-known presumption that every man intends the probable consequences of his act. The presumption is rebuttable, but if it is not rebutted it will stand. If the probable consequence of the act of Kesbar Singh, etc. was to cause annoyance to

Prem Ballabh and Gauri Datt, it will be presumed that they committed the trespass with that intention. In the present case, that presumption holds good because it is not rebutted. If they had in good faith, but erroneously, thought that they had a right to enter upon the field, then even if their act caused annoyance to Prem Ballabh, etc., it could not necessarily be presumed that their intention was to annoy. Their intention in that case would have been simply to exercise their supposed right. In other words, the presumption would have been rebutted on their showing their bona fides. But when they had nothing whatsoever to do with the field, they could not claim to have *bona fide* thought that they had a right to enter upon the field, and that their intention was simply to exercise their supposed right. Prem Ballabh, etc. had been in possession since long and must naturally have been annoyed by the wanton act of Keshar Singh, etc. A case under Section 447 was, therefore, made out against the opposite parties.

2. I reject the reference and maintain the convictions and sentences of Keshar Singh, etc.
Reference rejected.