Ganpat Vs. the State of M.P.

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Court : Madhya Pradesh

Decided On : Aug-30-2013

Appellant : Ganpat

Respondent : The State of M.P.

Judgement :

Criminal Appeal No.2574/1997 HIGH COURT OF MADHYA PRADESH AT JABALPUR Criminal Appeal No.2574/1997 Appellant : Ganpat S/o of Sakru, aged about 59 years, occupation-Cultivator, resident of village Chanewara, P.S. Changotola, Tehsil and District- Balaghat, M.P. Vs. Respondent : The State of Madhya Pradesh Present: Hon. Shri Justice B.D.Rathi For appellant : Shri Pranay Gupta, Advocate For the respondent : Shri C.K. Mishra, Government Advocate

JUDGMENT
(30.8..2013) This appeal has been preferred under Section 374(2) of the Code of Criminal Procedure (for short the Code.) against the judgment dated 6.12.1997 passed by Sessions Judge, Balaghat in Sessions Trial No.192/1996, whereby the appellant has been convicted under Section 307 of the Indian Penal Code and sentenced to undergo R.I. for 5 years, while co- accused Veer Singh and Narsu were acquitted of the offence charged with.

2. According to the prosecution case, on 2/7/96 at 10.40 a.m., Manglu (PW1) along with his father Phool Singh and one Sevakram lodged a report at Police Station Changotola, District Balaghat which was entered in Roznamcha Sanha

No.50A (Ex.P/4) by Head Constable Fagan Singh (PW12) to the effect that while he was sowing paddy in his agricultural field with his father, uncle Deep Singh and other members of the family, appellant Ganpat Gond and acquitted co-accused Veer Singh and Narsulal came there and prohibited him from sowing and asked him to leave the field. On his objection, Ganpat gave a Lathi blow on his left hand and back and also gave a forceful blow by butt of Lathi on his abdomen. As Deepsingh and Imrat came forward to intervene, they were also assaulted by Veer Singh and Ganpat with Lathi. The incident was witnessed by Deepsingh, Sirpat and Basanti bai. On the basis of the said information, Crime No.24/96 leading to registration of FIR (Ex.P/17) was recorded and on completion of investigation, charge-sheet was filed. 2 Cr.A. No.2574/1997 3. Charge under Section 307 of the IPC was framed. Appellant denied the charge and pleaded false implication.

4. Learned counsel for the appellant submitted that the impugned judgment was passed without proper appreciation of evidence on record. According to him, the same set of evidence on which co-accused persons were acquitted, could not have formed the basis of conviction of the appellant. He further submitted that the disputed land was in the possession of the appellant and the complainant party was the aggressor and, therefore, trial Court ought to have given the benefit of right of private defence of property to the appellant. In alternative, he submitted that the injuries sustained by the complainant were simple in nature except injury no.3 that had resulted in rupture of spleen, but the same was not dealt with an intention to cause death of complainant.

5. In response, learned Government Advocate, while making reference to the incriminating pieces of evidence on record, submitted that the conviction is well merited and the impugned judgment does not deserve to be interfered with.

6. Having regard to the arguments advanced by the parties, record of the trial Court was perused.

7. After taking into consideration the evidence and material available on record, trial Court has held that it was not evident that complainant Manglu (PW1) had reached on the disputed land for sowing, without any right. It was also held that while Manglu was running from the field on the shout of appellants, he was

assaulted by the appellant by Lathis and the injury inflicted was sufficient in the ordinary course of nature to cause his death as his spleen was ruptured and, therefore, the appellant was not entitled to right of private defence under Sections 104 and 105 of the IPC.

8. On perusal of evidence of the witnesses, it is clear that on the date and time of incident, disputed land was in the possession of appellant and other acquitted co-accused persons, as Manglu (PW1) had deposed in para 7 of his evidence that disputed land was purchased by Hiraman, his maternal grandfather, who had died 10-12 years prior to the incident and since then the land was being cultivated by the appellant party and thereafter this incident had occurred. In para 22, he further stated that since 3-4 years prior to the 3 Cr.A. No.2574/1997 date of incident, land was being cultivated by the appellant. Although, he tried to say that in between land had again come in his possession, yet, evidence has not been produced to prove as to when the land had again come in his possession. Deep Singh (PW2) in para 8 deposed that the land was cultivated by appellant party as tenants. Ruplal (PW5) also deposed that land was cultivated by appellant party. Purantabai (PW4), Kotwar, also deposed that revenue of the land was continuously paid by the appellant party. Further, Manglu admitted that, the proceedings initiated by him for mutation of land, were objected to by the appellant party and the same were still pending.

9. In para 20, Manglu stated that, including him, they were about 10 people in the field for sowing paddy. In para 21 he deposed that the accused persons had chased all his associates away and he was left all alone in the field. In para 22 again, he deposed that, while being assaulted, he was alone in the field. Therefore, finding of the trial Court that Manglu was assaulted while he was running away from the field, is contrary to his deposition as indicated above. That apart, even in the light of prosecution version as reflected from the FIR (Ex.P/4) that when the appellant had objected to sowing of Paddy, the complainant, instead of leaving the field, insisted that the disputed land was in his possession and continued to sow, the aforesaid finding of the trial Court cannot be sustained.

10. It also transpires from the record that FIR (Ex.P/4) was lodged by Manglu, but Manglu, in para 17 of his evidence, has testified that the FIR was lodged by his father as he was unconscious, and this anomaly also renders credence to the defence version.

11. Accordingly, old possession of appellant is duly proved from the evidence on record and, therefore,in absence of evidence as to when the land again came in the possession of complainant, it will be presumed that appellant was continuing in possession of the land without any break.

12. Therefore, it is clear that since the death of Hiraman, owner of the land and also on the date of incident, land was under the actual possession of the appellant party. Complainant and his companions, as he has admitted in his evidence had reached on the land for sowing, were therefore criminal tresspassers. 4 Cr.A. No.2574/1997 13. As per the medical report (Ex.P/8A) prepared by Dr. Mukesh Shrivastava (PW6), Manglu had received two simple injuries and one spleenic tear due to hit over abodmen by some hard and blunt object. However, as per Modi's Medical Jurisprudence and Toxicology, Twenty-first Edition, Page No.332, on account of its situation, rupture of a normal spleen is very rare unless caused by considerable crushing and grinding force, such as passing of a carriage or motor car over the body, or by a crush in a railway accident, or by a fall from a very great height. Accordingly, the probality of defence that the said injury was received due to fall, cannot be ruled out and even assuming that rupture of spleen was caused by appellant, then too the same has not resulted in his death. In the aforesaid premises, the trial Court ought to have accorded benefit of right of private defence of property to the appellant under Section 104 and 105 of the IPC.

14. The appeal is, therefore, allowed. Impugned conviction and consequent sentences are set aside. Appellant is acquitted of the offence. Appellant is on bail. His bail bonds stand discharged.

15. Copy of the judgment along with the record of the trial Court be sent to the trial Court for information and compliance. (B. D. RATHI) JUDGE 30 8.13 (and)