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Court : Allahabad

Decided On : Mar-03-1949

Reported in : AIR1949All564; 1949CriLJ868

Judge : Raghubar Dayal and ; Agarwala, JJ.

Appellant : Horam and ors.

Respondent : Rex

Judgement :

Agarwala, J.

1. This is an appeal by seven persons, Horam, Chhote, Jithua, Mangala, Ram Chander, Jhabra and Moti, who have been convicted by the Sessions Judge of Moradabad under Sections 304/149, 325/149, 323/149 and 147, Penal Code, and sentenced to various terms of imprisonment, the maximum sentence being seven years.

2. The prosecution case was that the accused Ram Chander was a tenant of a certain plot in Village Jagua in the District of Moradabad in the zemindari of Mohammad Mehdi Raza. There were ejectment proceedings against Ram Chander and it was alleged possession was delivered by the court amin to the zemindar's representative on 1lth November 1945. At that time there were no crops in the field. In June 1946, be the prosecution story went on, the zemindar

got a crop sown in the field but owing to excessive rain this crop did not come up satisfactorilly About ten days later, namely, on 27tb June I9i6, the zemindar decided to have the field reploughed and reown. He sent Teja along with Ram Das, Imam Baza, the zemindar's brother, and Sabir Husain, his karinda, to the field in question They started ploughing the field when the accused in a body came up on the scene and asked why the field was being ploughed and without waiting for the reply proceeded to beat Teja. Rani Das ran to the rescue of Teja and was also beaten. Then Imam Baza and Sabir Husain, who came to the help of Teja and Ram Das, were also given a beating. As a result of the beating Sabir Husain died later in the day.

3. A report of this incident was made by Teja at 6-80 P. M. the same day. Of the accused, Horam also made a report earlier in the day at about 10-58 a. M. In this report it was stated that Horam and his brother Chhote went to see the field. (It may be mentioned that Chotte and Horam both are the sons of Ram Chander, the erstwhile tenant of the field.) Horam saw that Teja, Ram Daa, Hishua, Kalewa and Sabir Husain were ploughing up the field which had already been sown by him. Horam and Chhote asked them why they were re ploughing the field. Upon this the persons mentioned above said that they had been Ordered by the zemindar to re-plough it. Horam prohibited them from doing be and thereupon those persons beat him and Chhote with lathis as the result of which both of them were injured.

4. The defence of Horam and Chhote was on the lines of Horam's report just mentioned, while the defence of the other accused was that they had been falsely implicated and that they had nothing to do with the matter.

5. As a result of this marpit, which admittedly took place, four persons were injured on the side of the complainant; Sabir Husain, who died, received one contused wound and one contusion on the head resulting in the fracture of the skull, which was the cause of his death, Teja received four bruises and a broken arm, Imam Raza bad three bruises and Ram Das a contused wound on the bead, two bruises and an abrasion. On the side of the accused, Horam received one injury and Chhote received five injuries, Horam' injury being on the head. It is clear, therefore, that the complainant's party got the worse of the fight.

6. In support of the prosecution case, the three surviving victims, Teja, Imam Raza and Ram Das, and four other eye-witnesses, Mohammad Hanif, Chhajju Singh, Tufail Abmad and Hira Singh, were produced. The learned Sessions Judge disbelieved these four witnesses, two of them, namely, Hira Singh and Chhajju Singh, bad turned hostile. He relied on the evidence of the three surviving victims to some extent, though not to the whole extent. In his opinion the facts were that the field in question had been delivered into the possession of the zemindar and Ram Chander accused had been ejected and was aware of the ejectment proceedings; that in spite of this fact he persisted in sowing his crop in the field; that on the day in question the zemindar's party came and ploughed up the crops, and that the accused, realising what was going to be done, formed a party and went to the field to prevent it, as a result of which a fight developed in which Sabir Husain lost his life and the otter accused sustained injuries. According to the learned Judge there was no intention to cause death and, therefore, the offence for which the accused could be held guilty came under the purview of Section 804 and not of Section 302, Penal Code with which they had been Originally charged. He also found all the accused guilty for having caused grievous and simple hurt and forming an unlawful assembly and, therefore, with the aid of Section 149 convicted all of them under Sections 324, 32 and 323 and Section 147, Penal Code as we have stated already.

7. On behalf of the appellants, the learned Counsel has urged that the tenant Ram Chander, accused, was never lawfully ejected inasmuch as the requirement of the rule framed by the Board of Revenue to the effect that at the time of ejectment of a tenant the tenant, if present in the village, must be called and delivery of possession must be made in his presence, was not com. plied with, and that even if it can be held that he was lawfully ejected, he did not know of the ejectment proceedings. The rule referred to by the learned Counsel has been framed by the Board of Revenue with reference to Section 181, U. P. Tenancy Act and is as follows:

79. Delivery of possession in execution of a decree or Order for ejectment shall be made by the qurq amia who, on his arrival in the village, shall send notice to the tenant, and, in case there la any sub tenant, also sub tenant also. The ejectment

shall be made on the spot (not at the village chaupal), and from each field separately in the manner provided in Rule 36 of 0. 21 ot Schedule 1, Civil P. C, 1908 (V of 1908) in the presence of the tenant, if ho is in the village, and of two villagers whose names should be mentioned in the qurq amin's report, If the tenant is not present in the village, Cr refuses to attend, the qurq amin shall record the fact in his report. If at the time of the delivery of possession there exists on the holding any ungathered crop Cr any trees of which the value has not been determined by the Court, the amin shall state in his report the kind of crop and his estimate of its probable value, and the kind, number, and estimated age and value of the trees. The report shall be signed by the landholder Cr his agent to whom delivery is made, and by the tenant, if present, and the parties shall be directed to apply, if they wish to do so, to the Court executing the decree, for the settlement of the value of such crops and trees. If the patwari Is present in the village, the qurq amin shall ask him to attend, and shall see that the patwari makes a record of the ejectment in his diary as directed in the rules relating to patwaris. In case any party refuses to sign the report, the amin shall record the fact.

8. As regards the question of fact whether Ram Chander was informed Cr had knowledge of the ejectment proceedings we hare got the evidence of two witnesses the amin, who effected delivery of possession, and the patwari of the village Faiyaz Uddin. The amin admits that at the time of delivery of possession Ram Chander, the tenant, was not present nor was he called and information was not sent to him. He, however, added that the factum of the delivery of possession was notified by beat of drum in the whole village. He also admitted that on the same date there was another proceeding against Ram Chancier and that was for attachment of certain property belonging to Ram Chander and that Ram Ghander was present at that time. This proceeding also arose _out of the same case out of which the ejectment proceeding had arisen. Thus it appears that Ram Chander was in fact present in the village on the same date and yet he was not called at the time when the delivery of possession was alleged to have been effected. The patwari, Faiyaz Uddin, stated that in his records Ram Chander continued upto the date of his examination, as the tenant of the plot, that he had absolutely no information about his ejectment proceedings. If the patwari did not come to know of the ejectment proceedings it is possible that Ram Chander may not have come

to know of them. In a criminal case, we must give the benefit of doubt to the accused, and, therefore, think that the contention of the learned Counsel that Ram Chander did not come to know of his ejectment may be accepted as correct. That, however, does not mean that the proceedings for ejectment would be rendered invalid.

9. Under Section 181, U. P. Tenanoy Act, eject, ment proceedings are to be made 'in accordance with the provisions of Gode of the Civil Procedure, 1908. relating to the execution of decrees for deli. very of immovable property.' The procedure prescribed in the Code of Civil Procedure is stated in o. 21, Rs. 35 and 86. They do not require any intimation to be given to the judgment-debtor at the time when delivery of possession is to be made to the decree-holder. The Board of Revenue, however, have framed certain rules under the powers conferred upon them by Section 293, U. P. Tenancy Act, This section runs as follows:

The board may, with the previous sanction of the Provincial Government and after previous Publication, make rules consistent with this Act and with any roles made under Section 292:

(a) for the guidance of officers in the determination, enhancement, abatement, and commutation of rent;

(b) for the guidance of officers deaiding applications under Sections 15 and 16 and Section 18 ;

(c) for the guidance of officers deciding suits under B. 49;

(d) for the guidance of officers deciding applications under Sa, 53 and Hi ;

(e) for the guidance of rent-rate officers ;

(f) as to the manner of Publication of a notice of abandonment ;

(g) as to the procedure to be followed in applications under this Act;

(h) for the guidance of officers in executing a decree f for arrears of rent by sale or lease of the interest of a tenant in a holding Cr part of a holding ;

(i) as to the transfer of cases by revenue Courts ;

(j) as to the persons before whom and the mode in which affidavits may be made and the matters which may be proved by affidavit; and

(k) generally for giving effect to the provisions of this Act.

There is no express provision in Section 293 for the Board to make rules in respect of proceedings for delivery of possession mentioned in Section 181 of the Act. The Board may, however, frame rules under the general provision contained in Sub-clause (k) of Section 293, 'generally for: giving effect to the provisions of this Act.' In exercise of that power the Board has framed the rule already quoted. The language of this rule suggests that the qurq amin is directed to send a notice to the tenant on his arrival in the village, and then to deliver possession in the presence of the tenant, if he is in the village, and of two villagers, whose names should be mentioned in the report regarding delivery of possession. As a rule of guidance for the qurq amin there can be no objection taken to its validity. The rule was, however, not intended to affect the rights of the decree-holder in case the qurq amin failed to follow the procedure prescribed. If, on the other hand, the procedure prescribed in Rs. 35 Cr 36 of O. al, Civil P. C, is not followed that would be a different matter altogether. In the present case the procedure prescribed in Section 86 of o. 21, Civil P. C. was followed and, in our opinion, the mere fact that the qurq amin failed to give notice to the tenant and to deliver possession in his presence would not vitiate the delivery of possession.

10. The next point urged before us is that Ram Chander accused who was the previous tenant of the land, had, by his sowing a crop on Cr about 17th June 1946, without opposition from the zemindar, acquired effective possession of the plot and having so acquired effective possession it was not open to the zemindar to retake possession by force without recourse to a process of law.

11. This question is not free from difficulty. In so far as the effective possession of Ram Chander by what he did on 17th June 19l6 is concerned, we think it can be safely held that he had come into effective possession of the plot, It can further be said that his possession was not in the process of acquisition and that be had

completed his possession. Where a trespasser enters upon the land of another, the per. son in whom the right of possession is vested, while the trespasser is in the process of acquiring possession, may turn the trespasser out of the land by force and if in doing so ha inflicts such injuries on the trespasser as are warranted by the situation, he commits no offence. His action would be covered by the principle of self-defence embodied in S9. 96 to 105, Penal Code. If, on the other hand, the trespasser bad already accomplished Cr completed his possession and the person with the right of possession has acquiesced in this accomplishment, it is not open to the latter to avail himself of the doctrine of self-defence and by inflicting injuries on the trespasser to re-acquire possession of his land.

12. In the present case it cannot be said that Ram Chander was in the process of acquiring possession over the field in question. As we have already observed, he had already perfected his possession by sowing the field and remain-ing in occupation for ten days. In these circumstances if the zemindar Cr his men had been the first to inflict injuries upon Ram Chander and others they would have been guilty of an offence and Ram Chander and others would have been justified to resist the attack of the zemindar and his men by force and if in doing so they had inflicted injuries they would have commited no offence. The question, however, is whether it was the zemindar's men who first inflicted the injuries Cr whether it was the accused who did so.

13. It has been contended strongly by the learned Counsel for the appellants that it was the zemindar's men who inflicted the injuries in the first instance. The learned Sessions Judge came to the conclusion that it was the accused who proceeded to inflict the injuries in the first instance and the zemindar's men only retaliated in self-defence. We have ourselves considered he evidence and we think that the finding of the learned Sessions Judge on this point is perfectly correct.

14. The question then is whether the accused were protected by the right of self-defence in preventing the zemindar's men from disturbing their previous possession acquired ten days earlier. They would be so protected only if the zemindar's men in entering upon the land and reploughing it and uprooting the crop of Ram Chander already sown therein were committing . an offence either of

criminal trespass Cr mischief Cr theft. The possession taken by Ram Chander on 17th June was against the ejectment proceedings effected by a Court of law and was, therefore, illegal, and as we have observed, even such an illegal possession cannot be disturbed by inflicting injuries, but can it be disturbed without inflicting injuries? The right of possession was undoubtedly with the zemindar. Could he take recourse to self-help and recover posses, sion of the land if he could do so without inflicting any injuries upon the trespasser, who had come on the land ten days earlier Cr must he have recourse to Court of law? This question is not free from difficulty and in the view that we have taken of the case it is not necessary for us to decide it. For, whatever may be the rights of the zemindar's men, it is clear upon the finding already recorded by us, namely, that Ram Chander did not know of the proceedings of delivery of possession, that Ram Chander and his men were acting under a bona fide, though mistaken, belief that Ram Chander was still the tenant of the plot and that the zemindar's men were, in violation of his rights, attempting to dispossess him by force. In this view of the matter, the action of the accused would be covered by Section 79, Penal Code and if they inflicted injuries under a misapprehension of the fact that they were so entitled to inflict injuries in Order to protest their rights they would not be guilty of any offence, provided, of course, the injuries inflicted' did not exceed the exigencies of the situation.

15. The next question to be considered is whether the accused exceeded their right of self-defence, assuming, of course in their favour, that they bona fide considered that the zemindar and his men had no right to take forcible posses-sion of the plot. It is in evidence that the accused proceeded to the spot and inflicted slight injuries on Teja and Ram Das alone. Upon this Sabir Husain rushed towards the accused with a lathi in hand. Thereupon, the accused are said to have inflicted two blows on Sabir Husain, both on the head, with the result that Sabie Husain's head was fractured. Since Sabir Husain -was armed with a lathi and was obviously approaching the accused in Order to beat them there was apparently an apprehension of injury of death to the accused, and the accused were there,fore, justified is inflicting the two injuries on Sabir Husain, Therefore, it cannot be said that the accused exceeded their right of self-defence.

16. It has been further argued that what, ever may be said with regard to Horam and Chhote the other five accused did not suffer any injury and there is no reliable evidence that they were even present at the time of the mar pit. As, in our opinion, none of the accused, on the facts found by us, cun be said to have committed any offence we need not go into a consideration of this question.

17. In our opinion, therefore, the accused were not guilty of any offence and should have been acquitted.

18. We, therefore, allow this appeal and set aside the convictions and sentences The accused are on bail. They need not surrender to their bail.

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