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Ambika Singh Vs. State

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Court : Allahabad

Decided On : May-10-1960

Reported in : AIR1961All38; 1961CriLJ15

Judge : A.N. Mulla and ;S.S. Dhavan, JJ.

Acts : Evidence Act, 1872 - sections 60, 105 and 156; Indian Penal Code (IPC), 1860 - Sections 96, 97, 302, 149 and 326; ;Code of Criminal Procedure (CrPC) , 1898 - Sections 145

Appeal No. : Criminal Appeal Nos. 519 and 550 of 1960 and Referred No. 26 of 1960

Appellant : Ambika Singh

Respondent : State

Advocate for Def. : H.N. seth, Asstt. Govt. Adv.

Advocate for Pet/Ap. : P.C. Chaturvedi, Adv.

Disposition : Appeal dismissed

Judgement :

Dhavan, J.

1. The six appellants, Ghulab, Ambika, Chandrika, Amarnath, Trilakdharj and Krishna, were convicted by the learned Sessions Judge, Mirzapur, as a result of an occurrence which took place on 9-9-1959 in which Ajmer deceased lost his life. Ambika was convicted of murder and sentenced to death. The other five were also held guilty of murder with the aid of Section 149 of the Penal Code but sentenced to imprisonment for life. These 5 accused were also convicted of rioting and sentenced to two years' rigorous imprisonment each. Ambika was also convicted under Section 148 I. P. C. of the offence of rioting armed with deadly weapon and awarded rigorous imprisonment for three years, All of them have appealed against their conviction and sentences.

2. The prosecution case against the appellants very briefly was as follows:

There appears to have been a dispute over a plot of land between the accused Ghulab and the deceased Ajmer. Both were residents of the same village, Jasa Bhagaura. According to the Prosecution the land was in the cultivatory possession of Ajmer who had been a sub-tenant for nearly fifteen years. Ghulab wanted to oust him and recover possession. Ajmer had sown Bajra, Urd and Arhar in this field, but the crop was a comparative failure and he therefore decided to re-plough the land. On 9-9-1959, he was engaged in uprooting the old crop, and with him were his wife Shrimati Bashiran and a ploughman Asghar, Ajmer and Asghar were doing the ploughing while Basbiran was collecting the uprooted crop.

They were all unarmed, At this moment the six appellants arrived. They were all armed --Ambika with a spear and the remaining five with lathis. Ghulab ordered Ajmer to stop ploughing, but the latter refused and said that he had been in cultivatory possession for the last fifteen years artel had a right to plough the land, Thereupon Ghulab fired two crackers which went off with a bang. Ajmer stepped back towards the south. Ghulab, however, incited his associates to assault Ajmer and shouted 'Maro. Sale Ko'.

Thereupon Ambika plunged his spear into the left thigh of Ajmer and it went right through. He kept it pressing against the wound, holding his victim down like a pinned beetle. Ghulab and the other accused gave him lathi blows. His wife and servant were not assaulted. All the three shouted for help which brought on the

scene a number of persons. On their intervention the assailants ran away towards Sikra Village which is nearby. After they had left, Ajmer, who had fallen down, got up, but after a few steps he collapsed and died. Leaving her husband's dead body in a Qabristan nearby, Shrimati Bashiran went to the thana to lodge a report, accompanied by the Chaukidar.

There was no delay in making it. The Second Officer in charge of the police station immediately proceeded to the spot and found the dead body of Ajmer in the Qabristan. He discovered blood stains and took samples of the stained earth. He also recovered the remains of two crackers. Meanwhile all the accused had made themselves scarce and were treated as absconders. Their property was attached after the usual proclamations. Subsequently some of them surrendered to the court while the others were arrested.

3. All the accused were charged with murder and other offences. Ghulab admitted that he was at the scene of occurrence and that a fight did take place, but he gave a different version of it. He alleged that the land in dispute did not belong to Ajmer and was never in his possession, nor had he sown any crop over it. The land was his and he had sown the crop which was standing on it on 9-9-1959. On that date he went to the field with one Sarwaha and two ploughmen. Ghulab admitted that he and the ploughmen were armed with a Danda and the Sarwaha with a spear (Ballam), but denied that any of the other five accused were there.

His party of four found Ajmer with 10 or 12 others engaged in uprooting the crop which had previously been sown by him. He protested whereupon Aimer and his companions shouted 'Maro Sale Ko'. One of them gave him a lathi blow which he parried with his own lathi, and as a result of the impact his lathi dropped from his hand and he took to his heels. His companions, however, remained behind and he did not know what happened after he had left.

4. All the other accused simply pleaded alibis. They denied that they were present on the scene of occurrence at all. The accused produced no witness to support Ghulab's version of the incident. However they did examine one witness, Sheo Lakhan, to prove that Ghulab and not Ajmer had been in pos-session over the plot for two years immediately preceding the occurrence.

5. The learned Sessions Judge disbelieved the defence story and held that the accused had formed an unlawful assembly for the purpose of acquiring by force the plot of land. He came to the conclusion that Ambika, who had thrust his spear into Ajmer's thigh was guilty of murder without any extenuating circumstance. He sentenced him to death. The others were sentenced to imprisonment for life and, in addition, to varying terms of imprisonment which have been specified above. Aggrieved by this decision all the six have filed these appeals.

6. Mr. P. C. Chaturvedi, learned counsel for the appellants, advanced the following arguments against the correctness of the decision of the learned Sessions Judge.

7. First, Ghulab and others were exercising their right of defence of property against Ajmer and were therefore entitled to oust him by force when he refused to stop uprooting the crop sown by Ghulab. Secondly, the evidence in support of the prosecution case that Ajmer had been in possession of the plot and had cultivated the crop which he subsequently uprooted was patently false and the learned Judge was wrong in relying on it. Thirdly, the accused were entitled to the benefit of the doubt if the evidence on both sides was such that it left a reasonable apprehension in the mind of the court as to whether the prosecution had established their Case against the accused.

Fourthly, as the prosecution witnesses having been disbelieved in their version that Ghulab had been in possession of the land and sown the crop, their evidence should have been totally discarded on other points as well and, at any rate, could not be a safe foundation for the conviction of the accused. All these arguments are more or less inter-connected and overlap to some extent.

8. The evidence on both sides in this case is divisible into two categories. The first concerns the actual occurrence and the second centres round the question of possession of the plot in dispute and the sowing of the crop which was admittedly uprooted by Ajmer and his wife on 9-9-1959. We shall proceed to consider the evidence from these two angles,

(9-13) (His Lordship considered the evidence and came to the conclusion that the version of the occurrence as given by the accused Ghulab was false, that the

prosecution fully established its case, that Ajmer was killed in the circumstances described by his widow Bashiran and that the pleas of alibis taken by other accused were rightly rejected by the Sessions Judge.)

14. Once it is established that an accused killed another person the onus is on him to prove that the killing was justified or excusable. We shall therefore now proceed to consider the second part of the argument of Mr. Chaturvedi. He simply pleaded justification. According to him, even if this Court holds that Ajmer was killed in the manner in which the prosecution say he was, the accused cannot be convicted of any offence because they were acting in self-defence. Relying on Sections 96 and 97 I. P. C. he contended that Ghulab and his companions were fully justified in going to the field on 9-9.-1959and asking Ajmer to desist from destroying the crop which had been previously sown by Ghulab; and when Ajmer went on with his act of destruction, theywere justified in using force.

Learned counsel contended that the accused had used no more force than was necessary to prevent Ajmer from destroying the crop. In the alternative Mr. Chaturvedi argued that if this Court is of the opinion that the accused exceeded the limits of self-defence, the responsibility for the death of Ajmer lies' on Ambika alone who inflicted the fatal blow with his spear. He pointed out that, the other accused had only inflicted lathi blows which resulted in simple hurt.

15. Before we consider the plea of self-defence, we would like to point out that no such Plea was taken during the trial. In fact, five of the accused persons stated that they were not present on the spot at all and the sixth (Ghulab) said that he bolted immediately after the first lathi blow was aimed at him and did not know what happened afterwards. However, it is open to an accused person at any stage to point out to the Court to examine the evidence and ascertain for itself whether it is consistent with a plea of self-defence. We shall therefore proceed to consider whether the evidence reveals any case of Justifiable homicide on the ground of legitimate defence of property.

The case of the accused is that the plot in dispute was in the possession of Ghulab who had been cultivating it at least for two years immediately preceding the date of occurrence. On the other hand Shrimati Bashiran and the other

prosecution witnesses have asserted that the deceased was the subtenant of this plot and had been cultivating it without interruption for nearly fifteen years. Unfortunately, as rightly observed by the learned Sessions Judge, the evidence on both sides on the question of uninterrupted possession is unreliable. (After going through evidence his Lordship continued).

16-17. We think it is reasonably certain that Ajmer acquired the sub-tenancy of this plot about 15 years before his death and cultivated it without let or hindrance for several years. The evidence of her widow Shrimati Bashiran is supported on this point by the entries in the Khasras for several years. (His Lordship referred to the Khasras and proceeded).

Shrimati Bashiran's evidence, however is also supported by several receipts for rent which she alleged was being paid by her husband as sub-tenant to Debi Prasad Tewari. Learned counsel for the appellants submitted that the receipts not having been properly proved were no evidence of their contents--but the evidentiary value of these receipts is corroborative. Shrimati Bashiran had stated that her husband was regularly paying rent and was obtaining receipts. She Produced some of the receipts in support of her allegation.

The receipts are admissible to corroborate her statement that her husband regularly brought home to her some documents and said to her that these were receipts. The accused produced no evidence whatsoever to rebut Shrimati Bashiran's allegation that her husband had acquired the sub-tenancy of the plots 15 years prior to the date of occurrence. Even the solitary witness for the defence, Sheo Lakhan, merely stated that Ghulab was in possessionof the field on the date of occurrence and had been in possession for the previous two years.

He said nothing about the earlier period nor did he deny that Ajmer had become the sub-tenant of this plot. In our opinion the Prosecution has established their case that Ajmer acquired the sub-tenancy of the plot about 15 years before his death and was in possession in March 1959 when he made his application under Section 145 Cr. P. C.

18-19. The next question is whether he ever lost possession. (His Lordship held that the defence failed to prove that Ajmer had lost possession of the land and proceeded).

20. In our opinion the contention that Ghulab and others had succeeded forcibly depriving Ajmer of his possession in August 1959 is not acceptable. The evidence on this point is conflicting. Sub-Inspector Ram Iqbal Tewari had stated in his report dated 30-8-1959 that the allegations of Ajmer were unfounded. The learned Sessions Judge was not impressed with this report, and nor are we. The primary duty of this police official in proceedings under Section 145 Cr. P. C. was to report whether there was any apprehension of the breach of the peace, but there is not a word about this in his report.

Instead he assumed the function of the Magistrate himself and stated that he had investigated into the matter and found that Aimer's allegations were baseless. He also alleged that he found Arhar, Urd and Bajra standing in the field, whereas Ghulab accused in his statement before the committing Magistrate made no mention of Urd. In the circumstances we are not surprised that the learned Judge doubted the correctness of this report. Mr. Chaturvedi argued before us that it would be unfair to Sub-Inspector Tewari to hold that he submitted an incorrect report when there was no cross-examination doubting his veracity. We do not think that the Court is precluded from assessing the veracity of a witness even in the absence of any cross-examination. When a police official submits a report which on the face of it does not contain what was necessary hut includes what need not have been included, the Court is entitled to wonder what the official was about.

21. We shall now deal with the question whether, even assuming that Ajmer had been forcibly deprived of his possession some time after the middle of August 1959, the accused were entitled under cover of self-defence to use physical force against him on 9-9-1959, when he went to his field and started uprooting the crop. This depends upon whether Ajmer had acquiesced in the trespass, and whether the trespasser had acquired settled and peaceful possession. It appears to us that Ajmer had never acquiesced in the cutting of his crops and other acts of trespass committed by the accused; on the contrary, he took active steps to assert his

rights.

His application dated 24-8-1959 is proof of this fact. Learned counsel contended that the accused acquired the right of self-defence by the mere act of having forcibly deprived Ajmer of his possession and uprooted his crop. We do not agree. Before an accused person can set up the plea of defence of property in answer to a charge of homicide, he must prove that he had a right of property which had to be defended.

22. The right of private defence is defined in the I. P. C. Section 97 of which provides;

Section 97.-- Every person has a right, subject to the restrictions contained in Section 99, to defend -

First. His own body, and the body of any other person against any offence affecting the human body.

Secondly. The property, whether movable or immovable, of himself or of any other person, against any act which is an offence falling under the definition of theft, robbery, mischief or criminal trespass, or which is an attempt to commit theft, robbery, mischief or criminal trespass.

23. Thus the right of self-defence is confined to the protection of person and property. In respect of property it is limited to resistance to specified criminal acts. Section 97 does not use the word possession but 'property'. Now, what is property? By no stretch of legal imagination can the word be extended to forcible possession usurped by a rank trespasser against a protesting owner who is too weak to resist. If Section 97 were to throw its protective mantle over this kind of possession it will be converted into the reverse of what the legislature intended the right to be.

From being a shield for the protection of property it will become a weapon for its destruction. Nothing is more likely to undermine the foundations of property than an interpretation of self-defence which will assure every goonda, ruffian, or bully in the land that Section 97 will come to his aid after he has turned out the rightful

occupier by force. Such an interpretation will be destructive of the cardinal principle of law that no man can derive any benefit under the law from his own wrongful or criminal act,

24. Learned counsel contended that the accused after having ousted Ajmer were in cultivatory possession of the plot. Again, we do not agree. A person who has sown the crops without let or hindrance is in cultivatory Possession, but one who uproots another's crops and follows this act of goondaism by sowing his own crop cannot claim that be is in such cultivatory possession as will entitle him to the right of self-defence under Section 97 I. P. C. II this were so it may lead to somewhat startling results in a country like India which abounds with small fragmented holdings capable of being ploughed in a single day.

A cultivator who leaves his village for a few days may find his own crops gone and someone else in 'cultivatory possession' of his land. If the law were to permit a trespasser in these circumstances, in the name of 'self-defence of property', to resist any attempt by the rightful owner or occupier to regain what belongs to him Section 97 will become in lawless hands a weapon of aggression. The right to Protect one's property is the foundation of law and order as it confers upon every person in peaceful possession an immunity against criminal law if he beats of any attack on it.

Self-help is permitted by law as a deterrent against lawless aggression, not in aid of it. It was never intended to be a charter of immunity for any ruffian to acquire possession by a surprise move backed by overwhelming force and then claim the right to defend the fruits of his robbery.

25. It is true that the Courts in India have taken the view that a trespasser who is in peaceful and settled possession of the property in dispute is entitled to defend his right of possession against physical attack. But a trespasser docs not acquire this right from his own act of trespass or taking forcible possession. No person can derive any benefit from his own wrongful or criminal act. His rights, if any, flow from the conduct of the rightful owner or occupier who may acquiesce in the trespasser's possession. In Paras Ram v. Rex : AIR1949 All274 Agarwala J. after a very elaborate survey of several decisions of different High Courts enunciated 12

Principles which may apply whenever a question of the right of defence of property arises. One of them was stated by the learned Judge as follows:-

'If the accused was previously in peaceful possession but the other side has dispossessed him and the accused has acquiesced in the dispossession for sometime, then again he must have recourse to law and not to enforce his right to take back possession by his own force'.

The principle is well known. The difficulty, however, arises in applying it to individual cases. No enunciation, however, elaborate, of principles can cover the infinite variety of disputes over property for all times to come. Each case has usually some peculiar features of its own. Border lines cases cause the greatest trouble to the law courts, the border is always trouble-some to those who guard it -- but the courts of law have to ensure on the one hand that the right of self defence remains inviolate and on the other that it does not become a weapon of oppression in lawless hands.

26. In Mohammad Khan v. The Crown, AIR 1949 Lah 128, Monir C. J. and Muhammad Jan, J. held that a person claiming the right of self defence of property must show that he was in settled possession of it. It was further held that the possession which a trespasser is entitled to defend against a rightful owner must be such settled possession extending over a sufficiently long period as was acquiesced in by the true owner. A casual act of possession would not have the effect of interrupting the possession of the rightful owner, who may re-enter and reinstate himself provided he does not use more force than necessary.

Such entry by the rightful owner will be viewed only as a, resistance to an intrusion upon possession which had never been lost. It was further held that the persons in possession by a stray act of trespass -- a possession which has not been matured into a settled possession -- constitute an unlawful assembly giving right to the true owner though not in actual possession at the time, to remove the obstruction even by using necessary force. In such circumstances, the trespasser in possession cannot claim the right of self-defence of property which right is exercisable only against an act which is an offence.

In enunciating this principle the Division Bench which decided the case followed the principle laid down in the earlier case of Emperor v. Bandru Singh, AIR 1928 Pat 124 in which it was held, following the principle of the English Law, that a mere trespasser cannot, by the very act of trespass, immediately and without acquiescence, give himself possession in the legal sense of the term, against the per-son whom he ejects and that the latter may, if hedoes not acquiesce re-enter and reinstate himself provided he does not use more force than is necessary. The law governing the rights of a trespasser in possession was summed up in Scott v. Matthew Browne and Co. Ltd., (1884) 51 LT 746, which has been the basis of several decisions throughout India, This judgment in turn was based on an earlier English case, Browne v. Dawson, (1840) 12 AD and EL 624, which is quoted in the observation which runs as follows at page 747:-

'Can a man come into my house when I am out, and then say that he claims to be there, and I cannot use force to turn him out? I cannot think that the law would admit of anyone taking up such a position as that. The law on the subject was, in my opinion, accurately stated in (1840) 12 Ad and Ed. 624. A mere trespasser cannot, by the very act of trespass, immediately and without acquiescence give himself what the law understands by possession against the person whom he ejects, and drive him to produce his title, if he can without delay, reinstate himself in his former possession'.

27. It may, therefore, be considered settled law that a trespasser acquires the right to defend his possession against physical attack only if he has come to it by the acquiescence, express or implied, of the rightful owner and his possession has become peaceful and settled. The passage of time does not necessarily confer any right on the trespasser. For example a man may be away when another takes forcible possession of his property behind his back, and on his return he can assert his right of Property by throwing out the trespasser. The question of lapse of time becomes relevant only if the rightful owner or occupier sits quiet and does nothing to assert his rights even after knowing that the trespasser is in possession of his property.

28. Learned counsel cited two authorities in support of his argument that a rank-trespasser who has taken forcible possession has a right to defend his possession even against the rightful owner after he has completed his possession. The first is a decision of this Court in Horam v. Rex : AIR1949 All564 . The second is a decision of Markby J. in Queen v. Sachee reported in 7 Suth WR (Cr) 112. The Allahabad decision has no application to the facts of the present case. Markby J. based his decision on the fact that the rightful owner had allowed the trespasser to occupy the land. In neither of these two decisions there was any dissent from the established principle of law that a trespasser can defend his possession only if the rightful occupier has acquiesced in his possession which has consequently become peaceful and settled.

29. In the present case, it is clear from Ajmer's conduct that he had neither acquiesced in the conduct of the accused, nor was he sitting quiet over it. His applications before the magistrate prove that he was anxious to get outside assistance to oust his dispossessors. It was only when he failed to get this help that he decided to go to the land himself and occupy it.

30. Learned counsel for the appellants advanced two reasons for holding that Aimer must he deemed to have acquiesced in his dispossession.First, he had moved the criminal court under S.145 Cr. P. C. This according to him revealed anintention to solicit the help of the law in restoring him to possession and an implied decision to leave the accused in possession till the courts decided the matter. In our opinion the application dated 24-8-1959 was an appeal to the authorities to curb the lawlessness of the accused person, who according to him Had defied previous orders.

He did not ask for any adjudication on the question of title which he presumed had already been decided in his favour by the order of 12-8-1959. He complained that the accused were powerful men and appealed to the conscience of the authorities. There is no specific prayer and the application ends with a somewhat pathetic appeal to the Magistrate to do something about it.

31. In our view a person does not lose his right to regain his property from a trespasser merely because, before taking any action, he informed the guardians of

law and order of what was taking place under their regime. On the contrary, he does the right thing as a good citizen if before Proceeding to help himself he brings the situation to the notice of those who have a primary responsibility to prevent and punish acts of criminal trespass against property. The law permits citizens to defend their property but does not insist, as a condition of the exercise of this right, that it should be exercised behind the back of the authorities.

32. Learned counsel contends that the failure to file civil suit after the criminal courts had refused him relief indicates a mood of acquiescence on the part of Ajmer. We do not agree. The interval between the report of the sub-inspector Tewari and the fatal assault on Ajmer was about 9 days. We do not know what order was passed by the Magistrate and when. The application was made before the City Magistrate whereas Ajmer lived in the village of Sindorya. We do not know when Ajmer was informed that his appeal for official help had been torpedoed by Tewari's report.

It is common experience that news of orders passed at headquarters may take several days to reach the client in the village. When Ajmer got news of the attitude of the authorities is not known and is a matter for speculation, but it is fairly certain it was after 30th August. The accused, who have set up the plea of acquiescence want this Court to presume from the mere lapse of nine days between Tewari's report and Ajmer's resumption of possession on 9th September, that he must have acquiesced in Ghulab's act of trespass. But they have not proved the date of Magistrate's order nor when Ajmer came to know of it.

But Ajmer's entire conduct during the last six months prior to his death is inconsistent with acquiescence and there is no evidence of a single act by him to suggest that he was sitting quiet or had acquiesced in the wrong done to him. The onus was on the accused to prove, as a part of their plea of justifiable homicide, acquiescence on the part of Ajmer. In the absence of any evidence, the court will not give a finding contrary to the entire conduct of the rightful occupier for the preceding six months which will have the effect of converting the victim of a trespass into a trespasser himself.

We hold that Ajmer had done nothing to lose his right to re-occupy the land even if it had been ploughed by Ghulab a few days before. NeitherGhulab nor any one else acquired any right of self-defence under Section 97 I. P. C. for their own act of trespass. Ajmer was entitled to regain possession of his land, if he could.

33. Furthermore, Mr. Chatwvedi's whole argument on self-defence is based on a misapprehension of the relative position of the parties. Learned counsel was all the time seeking to show that Ajmer had lost the right of self-defence as a result of his alleged acquiescence. But no question of any exorcise of self-defence by Ajmer arises in this case. On the morning of the occurrence Ajmer went to his field and finding no one there, proceeded to re-plough it. He was entitled to do so. Neither Ghulab Singh nor any one of his associates was there.

If they had been present and had resisted Ajmer and a fight had ensued and if Ajmer had killed or injured any of his opponents the question of self-defence might have arisen. But as there was no one present the way was clear for him to re-occupy his own land. There is nothing illegal or criminal in a rightful occupier who has never acquiesced in a trespasser's wrongful act quietly re-entering his own land while the trespasser is away and resuming possession of what belonged to him.

34. The right of self defence of property under Section 97 I. P. C. is available to a trespasser only against some act of the rightful occupier which amounts to theft, robbery, mischief or criminal trespass or any attempt to commit any of these four crimes. But if the rightful owner somehow resumed possession of his own land in the absence of the trespasser he commits no crime and the trespasser on his return cannot invoke the right of self-defence to oust the rightful occupier. The property does not belong to him, he is no longer in possession, and there is nothing which he can defend. The question of self-defence may arise if a vigilant trespasser keeps ceaseless watch over the property and prevents the rightful occupier from making a re-entry.

But if he is not vigilant and permits the owner to regain possession of what still belongs to him, bis right to defend his wrongful possession is gone, for the simple reason that there is no possession. In this case, if Ghulab and others had kept a

day-and-night watch over the field and had prevented Ajmer from entering his land, the question of their or Ajmer's right of self-defence might have arisen. But as Ajmer resumed possession peacefully when they were absent, no question of self-defence arises.

35. Mr. Chaturvedi contended that as Ajmer not only occupied the filed but also commenced uprooting the crop previously sown by Ghulab, he did commit the triple crime of theft, mischief and criminal trespass and the accused were entitled to prevent him by force. This argument assumes that a trespasser who sows a crop on another person's land against that person's wishes and in defiance of his protests acquires the right to reap the reward of his criminal act and it further assumes that the owner has no. right to clear his own land of anything which has been planted without his consent. This argument cannot be taken seriously.

36. We shall now consider the vital question whether, even assuming that Ajmer had lost his possession and was trying to regain it by uprooting the crop sown by Ghulab and planting his own, theplea of self-defence is available to Ghulab and hisco-accused. The established facts are that Ajmer, his wife and a ploughman were on the field. We shall assume for the purposes of this argument that they were engaged in uprooting a crop which was previously planted by Ghulab. According to the post mortem report, Ajmer was of average built and 45 years of age, and so is his wife. The ploughman was 25 years of age.

Thus the entire party consisted of a middle aged couple and a young ploughman. They were completely unarmed barring a paina carried by Ajmer and the ploughman. (Painia is a sort of light whip to drive the bullocks). When the accused arrived their party consisted of six young men whose ages ranged from 20 to 32 years. Ambica was armed with a spear and the other five with lathis. They set forth to assert Ghulab's right to his Property. They found a middle aged couple accompanied by a young servant committing what is alleged to be an act of trespass. They asked Ajmer to stop but he refused and asserted that the land belonged to him.

However, he uttered no threats and said or did nothing to cause the slightest apprehension or alarm in the mind of any person of reasonable firmness or

courage much less a gang of six young persons who were armed. Thereupon one of the gang left off a cracker as a signal to the others. The evidence is that on the bang of the cracker Ajmer stepped back ('Dakshan ki taraf peechhe hat gaye'). In other words, his courage evaporated and he retreated. All that the accused had to do was to take possession of the land by driving out Ajmer's bullocks. It was not even necessary to take Ajmer by the scruff of the neck and push him out for he was disposed to find his way out himself.

But what did the accused do? After Ajmer had stepped back, Ghulab shouted 'maro sale ko' and Ambika immediately plunged his spear into Ajmer's thigh with such force that the point went clean through. It appears to us from the evidence that the bang of the cracker combined with a show of force by Ghulab's party had achieved the purpose of the accused if ft was to regain possession of the land. Therefore, the subsequent spearing of Ajmer and the assault with lathi blows after he had stepped back were not acts done in defence of property, albeit, in excess of the right of self-detence, but a brutal assualt with the intention of teaching him a lesson.

A thrust with a spear and a shower of lathi blows delivered after any necessity for the use of force has disappeared have as little relevance to any plea of self-defence as a criminal assault on a woman who has been caught stealing some one else's crops. In either case; it is prompted not by any instinct of self preservation or protection of property. In one case it is caused by an urge to satisfy lust and in the other by a desire to kill or maim or cause the hurt, as the case may be. We think that Ghulab and his co-accused did not really intend to protect property when they set upon Ajmer, but wanted to teach him a lesson.

37. We are of the view that Ghulab and his companions became an unlawful assembly, at any rate, when after Ajmer had stepped back on the bang of the cracker, Ghulab gave the call for attack to which all of them responded and 'went' for Ajmer, Ambika with the spear and the rest with their lathis.

The entire object of the assault was not to protect the crop but to glut their ire. Theirs was a cruel action comparable to that of a sadist who needlessly uses a hammer to crush a harmless insect which could be brushed off by the flick o a

finger. In Queen v. Gokool Bowree, 5 Suth WR (Cr) 33 (FB), an old woman caught stealing crop was beaten to death.

The plea of defence of Property was rejected and the accused were convicted of murder, In Ayodhya v. Emperor, AIB 1933 Oudh 41, it was held that the right of private defence even if originally available is lost, when the party which was attacked lay outnumbered and the violence used by the former was far in excess of the occasion. The principle laid down in these and several other cases will apply to the case of the accused before us. It is not a case of persons exercising the right of self-defence and exceeding it, for the evidence reveals that the object of the assault was not to defend any alleged rights of property but to liquidate Ajmer who had dared to assert his rights as a sub-tenant. We, therefore, hold that the plea of self-defence is not available to any of the accused and they were rightly convicted.

38. The next question relates to the proper sentence to be passed on each accused. It is clear that the accused were an unlawful assembly at the moment when the assault took place. One of them had come armed with a spear which shows that they were agreed among themselves that they would cause grievous hurt if it was necessary to achieve their object. One of them did cause grievous hurt in furtherance of the unlawful object. We are, therefore, inclined to hold that all of them are guilty of an offence under Section 326 I. P. C. read with Section 149.

We are prepared to give the benefit of doubt to the five accused other than Ambika and to hold that it is not fully established that they had come with the agreed intention of committing murder. We, therefore, change the conviction of these five accused from one under Section 302/149 to 326/149. In view of the brutality of the assault we feel the imposition of a sentence of 7 years' R. I. as just and proper.

39. The accused Ambika was responsible for the spear thrust which killed Ajmer, The learned Judge has taken the view that his conduct amounts to murder and has sentenced him to death. After giving this matter our careful and somewhat anxious consideration, we are of the opinion that, as regards Ambika's individual responsibility for the killing of Ajmer his action falls short of murder. There is no evidence that he aimed his thrust at any vital part of Ajmer's body. The weapon

entered his thigh and pierced through. In our opinion the case is somewhat similar to that of Kapur Singh v. State of Pepsu : 1956 CriLJ1265 , in which a person who had inflicted 18 injuries on the arms and legs of his victim with a Gandasa resulting in his death was sentenced to death by the Punjab High Court but, on appeal, convicted by the Supreme Court under Section 304(1) I. P. C.

We are of the opinion that Ambika is also guilty of the same offence--culpable homicide not amounting to murder. As regards sentence, we have not discovered any redeeming-feature in his conduct. The land did not belong to him and he killed a man in a quarrel which was not his own. After spearing his victim, he callously held him down as one would a harpooned beast. We are, therefore, of the opinion that his conduct calls for the maximum sentence permissible under Section 304(1) and sentence him to rigorous imprisonment for life.

40. As regards the conviction of the accused on other charges we uphold the decision of the learned Sessions Judge. In the result, the sentence of death on Ambika is set aside and we award him a sentence of imprisonment for life under Section 304 Part I. 'The sentence of life imprisonment on the other accused under Section 302/149 is reduced to seven years' Rule I, under Section 326/149. The reference with regard to Ambika is consequently rejected.

41. The appeal is dismissed subject to the modification of the sentences specified above. All the sentences will run concurrently. The appellants Ghulab, Chandrika, Amar Nath, Tilakdhari and Krishna Dube are on bail. They shall surrender forthwith to serve out their sentences.

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