

Sheo Balak Dusadh Vs. Emperor

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Court : Allahabad

Decided On : Aug-13-1947

Reported in : AIR1948All103

Appellant : Sheo Balak Dusadh

Respondent : Emperor

Judgement :

Harish Chandra, J.

1. Sheo Balak Dusadh, aged about 35 years, resident of Budhipur, police circle Ubhaon in the district of Ballia, has been convicted under Sections 802 and 457, Penal Code, and sentenced to transportation for life and rigorous imprisonment for a period of five years respectively for the two offences. The sentences have been ordered to run concurrently.

2. Village Bishunpura adjoins village Budhipur and the prosecution story is that on the night of 3rd and 4th November 1945 six or seven thieves came to the house of one Bansi, a resident of village Bishunpur and dug a hole in the western wall of his house. After completing the hole, they were trying to bore another in the second wall of the house when Mt. Motia, wife of Bansi's nephew Dhanai, who also lived in the same house, woke up on hearing the noise. According to the evidence it was three gharis to one pahar before sunrise. She roused Dhanai and Bansi from their sleep. Bansi is an old man of 80 years. Jita is another relation of Bansi who was

also living in the same house. Dhanai and Jita went to the side where the thieves had broken into the house and raised an alarm. They noticed eight or nine thieves. The alarm brought a number of neighbours including the deceased Gokul to the scene of occurrence. Seeing them, the thieves ran away and they were pursued by Dhanai, Jita, Gokul and others. The thieves went -cunning in the direction of Budhipur and after they had crossed the boundary between villages Bishunpura and Budhipur, Gokul struck Surat, one of the thieves, with his lathi in order to stop him and to effect his arrest. Surat in return Struck Gokul with his lathi and felled him to the ground. It is said that the appellant Sheo Balak was also one of the thieves and was armed with a spear. He also struck Gokul with it and he was killed on the spot. Some men from village Budhipur also arrived in the meanwhile and presumably a further beating was given to Surat as a result of which he also died. The dead bodies of Gokul and Surat were brought to the house of Bansi and a report of the occurrence was made by Mohammad Yaqub Mukhia at the police station at about half past seven the next morning, the distance of the police station being about 5 miles from the village. In this report it was said that Gokul had been killed by the lathi blow of Surat and there was no mention of any spear injuries caused to Gokul. It was said that the appellant Sheo Balak and one other thief named Raghunandan Singh inflicted injuries on Jita with lathis and spears. The medical evidence, however, shows that Gokul had received two stab wounds on the chest in addition to three bruises on different parts of the body. Death was due to shock and haemorrhage resulting from the penetrating wounds of the chest. The evidence of the prosecution witnesses, however, is that the penetrating wounds On Gokul had been caused by the appellant with his spear. The appellant pleaded not guilty and said that he had been implicated on account of his friendship with Surat who had committed a dacoity at the house of Bansi and had been killed by the villagers on the spot. He, however, produced no evidence in his defence.

3. Mohammad Yaqub Mukhia who made the first information report was not an eye-witness of the occurrence and his statement is that he had made the report on the information which he had received from Sahdeo and others. It is not in evidence that Sahdeo was one of the eyewitnesses of the occurrence and apparently the facts stated in the report by Mohammad Yaqub were based on

hearsay and much importance cannot be attached to the discrepancies which are to be found in it. According to this report Gokul had been hit only a single blow with a lathi and, in view of the injuries, actually found on the corpse of Gokul the statement contained in the report is obviously not correct. The prosecution examined, Mt. Motia, Dhanaj and Jita along with Jamuna, Parmeshwar, Sarju, Jaddu, Ram Jas, Hira Pandey and Ram Jatan Pandey who are alleged to have chased the thieves and. witnessed the occurrence. All of them said that the deceased Gokul was assaulted by Sheo Balak with a spear and there seems to be no adequate reason why the evidence of all these witnesses, who appear to be quite independent, should not be accepted as correct. According to the medical evidence Gokul died of spear wounds and if the evidence of these witnesses is believed, there can be no doubt that the appellant is responsible for the death of Gokul. Jita Ahir had received three injuries on his person and his left ulna bone was fractured. Dhanai had also received three injuries and there can be no doubt whatsoever that these two persons were actually present at the time when Gokul is said to have been assaulted by the thieves and the evidence of these witnesses is fully corroborated by the evidence of the other villagers who are said to have given the thieves chase.

4. It is, however, argued on behalf of the appellant that Gokul had no right to arrest him and that the appellant was therefore fully justified in offering resistance to his arrest and in assaulting him. A private person is authorised to arrest an offender only in the circumstances stated in Section 59, Criminal P.C. Sub-section (1) of that section is reproduced below:

Any person may arrest any person who in his view commits a non-bailable and cognizable offence, or any proclaimed offender, and without any unnecessary delay, shall make over any person so arrested to a police officer, or, in the absence of a police officer, take such person or cause him to be taken in custody to the nearest police station.

It is pointed out that the words 'in his view' have been interpreted as 'in his presence' or 'within his sight.' It is not the prosecution case that the deceased Gokul had himself seen the thieves making the hole or committing criminal

trespass and that he was, therefore, not authorised to arrest the alleged thieves who are said to have been running away from the house of Bansi. The statement of the witnesses is that when an alarm was raised by Jita and Dhanai, they went 'to the house of Bansi and saw a number of thieves running away from the house and they gave them chase. The question is whether the persons other than Jita and Dhanai who had themselves seen the thieves standing at the back of the house were authorised to arrest them or not. For, it is argued, the theft said to have been committed, by those persons was not committed 'in their view' within the meaning of Section 59, Criminal P.C.,

5. Learned Counsel for the Crown, Mr. Chandra Sekhar Saran, has drawn our attention to an English case in *Rex v. George Howarth* (1824-37) 1 Moody's crown Cases 207. No doubt this is a very old case but it appears that the law in England in regard to arrest by a private individual in a certain class of cases was very much the same as it is in India. A private person was authorised to arrest a prisoner while in actual commission of the offence. It was, however, held that the actual commission of the offence by the prisoner and his subsequent escape constituted one single transaction. The learned Judges held:

The conviction was lawful, for, as he was seen in the out-house, and was taken on fresh pursuit before he had left the neighbourhood, it was the same as if he had been taken in the out-house, or in running away from it, that it was all one transaction.

6. A perusal of Halsbury's Laws of England, 2nd Edn., vol. 9, p. 86 shows that according to English law a private person may also arrest without a warrant any one who in his presence commits a breach of the peace and also when the offender escapes immediately after committing the breach and is taken on fresh pursuit which commenced immediately and is continued without a break.

7. No Indian case has been cited before us upon this point, but the Madras case in *Arumuga Goundan v. Emperor* ('24) 11 A.I.R. 1924 Mad. 384 shows that there is a tendency to give the words 'in the view' wide interpretation. In that case several persons went to their cocoanut tope in order to see whether any theft of toddy was going on and saw a man standing on the ground with a pot of toddy in his hands

and two of his confederates climbing the trees, and arrested the man on the ground. No offence was being actually committed at the time. Krishnan J. who decided the case observes:

The toddy was, in my view, in the process of being taken or removed from the cocoanut tope : the first step in which would be to bring it down from the trees, which the other two persons who were up the trees were trying to do; and the next-step would be to carry the toddy away from the tope, which the man standing on the ground was doing, as he was collecting the toddy in a pot in his hands. I think, one should not put too strained a construction on the words 'in his view' and I think the prosecution witnesses were justified in arresting the first accused, as one of the thieves committing theft in their view.

8. In our opinion, when a man is found committing a non-bailable and cognizable-offence and then tries to escape, the whole is to be treated as one single transaction and any person who either sees him committing the offence or finds him running away immediately after the commission of the offence would be entitled to arrest him under Section 59, Criminal P.C. The deceased Gokul was, therefore, fully justified in running after the thieves and trying to arrest them. The matter may also be looked at from another point of view. Sub-section (2) of Section 46, Criminal P.C., provides that when a person forcibly resists the endeavor to arrest him or attempts to evade the arrest, the police officer or other person making the arrest may use all means necessary to effect the arrest. In the present case, Jita and Dhanai, who had actually seen the thieves at the back of the house, were clearly authorised under Section 59 of the Code to arrest them and when the thieves started running away from the house, they would, in accordance with the provisions of Sub-section (2) of Section 46, Criminal P.C., be authorised to use all means necessary to effect the arrest and. this would include the seeking of help from their neighbours in arresting them. No doubt there is no evidence that they actually called their neighbours to come and help them in arresting the thieves, but they raised an alarm which obviously meant a call to their neighbours to come to their assistance. In the circumstances, not only Jita and Dhanai but also their neighbours, who joined them in the chase, had the right to arrest the thieves and the appellant had therefore no right of private defence

against any attempt made by the deceased to arrest him. For the reasons given above the appeal is dismissed.

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