

Emperor Vs. Hira and ors.

Emperor Vs. Hira and ors.

SooperKanoon Citation : sooperkanoon.com/454518

Court : Allahabad

Decided On : Nov-25-1922

Reported in : (1923)ILR45All250

Judge : Ryves, J.

Appellant : Emperor

Respondent : Hira and ors.

Judgement :

Ryves, J.

1. In this case seven men were convicted by the learned Sessions Judge of Bulandshahr under Section 147 and Section 304 of the Indian Penal Code and sentenced to rigorous imprisonment for six months. A large number were accused, but as those persons were admittedly in the fight they alone were convicted and the remainder were given the benefit of the doubt. They have appealed.

2. The learned Sessions Judge has tried the case very carefully and has written a very full judgment. He has found the facts very dearly up to a certain point. They are as follows:

The complainants were a large body of persons composed chiefly of the adherents of Ali, a Muhammadan, and the adherents of a Hindu who made common cause.

These persons, as shown from the judgment, had for a long series-of years continued in unlawful possession of some plots of land in the village. The former zamindar, after protracted litigation up to the Board of Revenue, had established the fact that the complainants were trespassers who had no sort of right to possession of the fields. They were then sued for ejectment in the Revenue Courts and decrees were passed against them, and although, execution was taken out and they were ejected in due course of law, they nevertheless continued in possession of the fields. The zamindar sold the village to a leading vakil of Aligarh and he found the tenants equally recalcitrant. Failing to evict them by the Civil Courts he brought complaints against them for criminal trespass in the Criminal Court, and on conviction they were imprisoned and formal possession was made over to the zamindar. As soon, however, as they came out of prison, they forcibly re-took possession of the land. They were imprisoned again for a similar offence at the beginning of his year. The zamindar then let out these fields by registered lease to some of the accused, and towards the end of last June the accused, who were lessees of the land and were in peaceful and lawful possession thereof, were engaged in ploughing one of the fields. Thereupon the complainants in a large body came up armed with lathis and attacked the tenants, who called for assistance to the cultivators from the neighbouring fields who rushed up. They all had lathis with them and they resisted the very deliberate and prolonged attack made on them by the complainants. Considerable injury was caused to persons on both sides and Ali, the leader of the complainants' party, ultimately succumbed. Having arrived at this finding, the learned Sessions Judge does not go on to find in so many words who were the aggressors, because in his opinion 'It is quite immaterial whether the zamindar's men were ploughing and were attacked by Ali's supporters or' whether Ali's supporters were ploughing and were attacked by the zamindar's men or whether both parties started off to take possession of the field and met there and fought it out. It is immaterial who got there first. The point is that both sides intended to make a fight of it.' The learned Judge says in another portion of his judgment. 'It is impossible to believe that there was that entire absence of organization and premeditation that the accused suggest,' and he thinks it unlikely that the men who were cultivating neighbouring fields or were cutting grass there went out armed with lathis without any apprehension of being

involved in. fighting. He goes on to say: 'That the zamindar's party had the right to plough the field I do not for a moment dispute, but I say that they collected their supporters, whether seven or ten or sixteen is hardly material, but they collected their supporters, armed with lathis, and intended fighting it out; that is to say, in the words of the law, they were an assembly of five or more persons with a common object, and that common object was by show of force to enforce their rights. I fear I cannot appreciate the distinction which certain very learned Judges of the Honourable the High Court at Calcutta have attempted to make between enforcing a right and maintaining a right.

3. Before I discuss the law it seems to me necessary to come to a definite conclusion as to what were the facts, because it is only when the facts have been found with certainty that it becomes profitable or indeed possible to see what the law is that is applicable. I hold, and I think the learned Sessions Judge meant to hold, that the accused party, who were tenants of the fields under a lease and were in peaceful possession of those fields as tenants and were engaged in ploughing in the ordinary course of husbandry, had taken the precaution to take with them their lathis and had also taken the precaution to see that the men engaged in work on the neighbouring fields were ^{aj1} so armed, because they knew from the experience of the past that at some time; or another it was very likely that the complainants' party would attempt to seize those fields by force, and that is just what happened. I find that the complainants' party attacked the accused with lathis and persisted in that attack, injuring all the accused persons, and intended to persist in that attack until they had recovered possession of the field, but only desisted when their leader was very grievously injured and a largo number of themselves had got hurt. In fact they persisted in the fight until they were beaten off. The learned Sessions Judge says that the accused were an assembly of five or more persons with a common object and that common object was by show of force to enforce their rights. It seems to me that the learned Sessions Judge has overlooked the fact that Section 141 of the Penal Code, from which he has quoted, must be read with Section 96 and the following sections of the Code. On these facts I think the accused were protected by both clauses of Section 97, that is to say, that they had a right to defend their own persons and the persons of others against an offence affecting the human body, and (2) that they

had the right to defend the property against the complainants who were committing or attempting to commit at least the offence of criminal trespass. The learned Sessions Judge said that he is unable to appreciate the distinction which the learned Judges of the Calcutta High Court have drawn between enforcing a right and maintaining a right, but this view is not confined to the Calcutta High Court. It is, as far as I know, recognized by all the High Courts in India: See *Queen-Empress v. Narsang Pathabai* (1890) I.L.R. 14 Bom. 441 and *Regula Bheemappa v. Emperor* (1902) I.L.R. 26 Mad. 249, and more particularly our own High Court in the case of *Queen-Empress v. Timmal* (1898) I.L.R. 21 All. 122, to which I call the learned Sessions Judge's special attention, more particularly to the remarks on page 125 of the report. It is not opposed to the case of *Queen-Empress v. Prag Dat* (1898) I.L.R. 20 All. 459, the head-note to which case is misleading. The head-note says: 'When a body of men are determined to vindicate their rights or supposed rights by unlawful force and when they engage in a fight with men who on the other hand are equally determined to vindicate by unlawful force their rights or supposed rights, no question of self-defence raises.' This passage is taken from the judgment, but the very next sentence in the judgment has not been quoted. It is to the effect, 'Neither side is trying to protect itself but each side is trying to get the hotter of the other.' It sometimes happens that two parties make the possession of a field or a tree the pretext for a fight and then go out armed to see who are the better men. In such cases, as pointed out in *Prag Dat's case* (1898) I.L.R. 20 All. 459, obviously there is no right of private defence. It is a duel between the parties and nothing short of it. There are some cases reported, in which, owing to the uncertainty of the facts and, sometimes, to the attempts by Judges to express themselves epigrammatically, if I may say so, confusion has arisen and also the head-notes to these cases are often very misleading. It is never safe to accept the law as laid down in a head-note without examining the facts and the reasons given in the judgment, but I think if the cases are examined carefully, it will be found that the decision in each case is justified by the actual facts of that case. It is impossible to lay down any general rule other than that laid down in Sections 96, 97 and 99 of the Penal Code on this subject. It is interesting to note that when the Commissioners were framing this part of the law, in their report they say: 'We propose to except from the operation of the penal

clauses of the Code large classes of acts done in good faith for the purpose of repelling unlawful aggressions.... In this country the danger is on the other side; the people are too little disposed to help themselves the patience with which they submit to the cruel depredations of gangs of robbers and the trespass and mischief committed in the most outrageous manner by bands of ruffians is one of the most remarkable, and at the same time one of the most discouraging, symptoms which the state of society in India presents to us.'

4. In this case the accused were perfectly justified in ploughing the land which they had taken on lease. They did not know for a certainty, perhaps, that they would be attacked, but they must have thought that it was so very probable that they would be attacked by Alii and his party sooner or later when opportunity occurred, that it seems to me it would have been most foolish of them not to take precautions to protect themselves as well as their property, and I hold that they ' were perfectly justified under the circumstances in going armed with lathis and, also, as they were few in number and the complainants' party was large they were justified in seeing that their friends and neighbours were armed so that, if necessary, they could come to their assistance. It is not the case that they Knew that they were going to be attacked that morning and that they had time to have recourse to the civil authorities for protection. They were suddenly set upon by the complainants. If they had a right to protect themselves and their property, as I hold they had, I find that they did not exceed their right. If a man is entitled to protect his own life by using a lathi, it is impossible to weigh the force of the blows which he uses for that purpose, as it is said, 'in golden scales' and to adjudicate with great nicety as to the exact amount of force, which would be justified. This of course is, provided that no undue advantage is taken.

5. In the result I find that the accused were all of them justified in using force on the assailants in the defence of their property and of their persons and that they did not use more force than was necessary. I therefore allow the appeal, acquit the accused and, as they are on bail, they need not surrender.