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Court : Allahabad

Decided On : Jul-20-1948

Reported in : 1949CriLJ445

Judge : Agarwala, J.

Appellant : Paras Ram and anr.

Respondent : Rex.

Judgement :

Agarwala, J.

1. Parasram alias Har Prasad, and Basant were prosecuted under Section 304, Penal Code, read with 3. 84, Penal Code, for having caused the death of one Munnalal. They have been convioted of the offence with which they were charged and sentenced to ten years' rigorous imprisonment. They have come up in appeal to this Court.

2. The prosecution case was that the accused, who are father and son, were neighbours of Munnalal residing in village Chitora in the district of Budaun. They were relations of each other and had descended from a oommon ancestor. Their houses were adjacent to each other. There was a cattle trough in front of the house and haithalt of the deceased Munnalal. Thi3 cattle trough adjoined the platform of the house of the acoused. There was a longstanding dispute as to the

ownership of the cattle-trough between the accused and the deceased. On 14th June 1947, there was a quarrel over this trough between Munnalal deceased on the one hand and the acoused and one Kamdin on the other, which resulted in a fight. The accused and Eamdin gave lathi blows to the deceased as a result 0 which his skull was fractured and he died.

3. The defence was that there was a quarrel between Parasram accused and Munnalal over the cattle trough; that Munnalal was the aggressor and gave, him a lathi blow first with the result- that he fell down and became unconscious; that when Basant, accused 2, wanted to protect his father and raised his lathi with that object, then Paahpati and Shankar, on the side of Munnalal, and Munnalal himself gave him lathi blows. In self-defence Basant struck lathi blows on Munnalal who fell down and became unconscious.

4. The medical report showed that Munna-lal had received five injuries : (l) contused wound on. the right side of the head ; (2) contusion just above the right ear; (3) contusion, loft side of the head near tuft of hairs; (4) contusion with abrasion, right upper arm; and (6) swelling on left ankle joint. Causo of death was extensive fracture of skull caused by injury No. 1. Basant accused had received two injuries, (i) contused wound on the top of head size 1 1/2X 1/4 X skin deep; and (2) painful defused swelling on back of lower third right fore-arm.

5. The prosecution could produca only one eye-witness of the occurrence. Ho was Tara. Four others were examined in the Court of the committing Magistrate as eye-witnesses but they denied that they bad seen the occurrence. They were, therefore, not examined by the prosecution in the Sessions Court. Now Tara said that on hearing a noise he had gone to the place of occurrence; that on reaching there he heard hot words being exchanged between Munnalal on one side and the accused on the other; that it was Munnalal who wielded his lathi first and then the accused used,lathis in return; and that the deceased received a lathi blow from Basant accused. From this statement, it is quite clear that it was Munnalal who was the aggressor because he struck the first blow witheut the aocuEfid having assaulted him or having threatened to assault him. The learned Sessions Judge, however, says that Tara appears to have stated about the deceased having usod

his lathi first only to save the accused from punishment and to give them an opportunity to plead the right of private defence. The learned Sessions Judge did not believe this part of the statement of the witness and held that no occasion for the exerciso of the right of self-defence arose. I have no reason to think that the witness was not telling the truth when ho stated that Munnalal was the first to strike. The learnod Sessions Judge then goes on to say that if this statement be taken to be true, oven then the accused had .no right.of self-defence. According to him.

when two parties are armed with latbia for a fight to enforce their supposed ownership over a property it doea not matter which party attacks first and tight of private defence alto does not arise in such cases. It is quite evident that be to the accused were armed with lathis from before starting of the fight. They most have, therefore, come there with the intention of fighting and cannot be given the benefit of the right of private de-' fence simply because the deceased wielded his lathi first

The learned Sessions Judge is right in saying, that be to the accused were armed with lathia from before starting of the fight, but there is no evidence on the record to show that the parties had made any pre-arranged plan of fighting ous the dispute that day or had made any preparations to that end from before the start of th& fight. It appears that there was a quarrel as usual over the cattle trough. In the absence of any evidence, it cannot be said that the parties. came out of their houses with the intention of fighting. It is quite possible, that the quarrel started all of a sudden on some hot words or abuses being exchanged. In the absence of evidence to show that there was a prearranged plan or preparation to fight it could not be said that the intention of the parties was to decide the question of ownersliip of the cattle trough by an armed fight.

6. The question, however, is of some importance and I think I should deal with it at length, specially when the view expressed by the learned Sessions Judge finds support from the observa. tions made in some of the reported cases.

7. In Queen v. Nawasdee (1861) Gap. no. l W. B. or. 11, the facts were that prisoners 93 and 94 having reason to apprehend an attack, stood outside their house. Presently, the attacking party came, when words arose, and then blows

followed on be to sides. Steer J. held that the accused courted the attack, and instead of sitting within doors when, if their house had been attacked, they would have had a right of defence, they went outside, and met the assailants, and that, therefore, they were guilty. With all respect to the learned Judge, I have grave doubts as to the soundness of the decision, It is not only when the property of a person is actually attacked that he is invested with the right of self-defence. If there is an attempt or threat to attack the property then also there is a right of self-defence. There is nothing wrong in the party threatened to try to prevent the threat materialising and to meet the attack by standing in such a position that no harm be inflicted on the property. In the case before Steer J. the accused wore perfectly entitled, to my mind, to stand outside their house to prevent any harm being caused to their house.

8. In Queen Empress v. Prag Dat, 20 ALL 459 : (1898 A. W. N. 117), there was a dispute between the Thakurs and Chaubeys of Madho-nagar over a strip of waste land. The Chaubeys asserted that the land appertained to a grove which admittedly belonged to them, bufc the Thakurs on the other hand maintained that the disputed land was part of their cultivation, which as a fact did adjoin it It was found that on the day of occurrence the Thafcur party consisted of from 30 to 60 men, and that one of that: party had a gun and the others had lathis. On the other side were arrayed the seven accused: one of them carried a gun; others had nothing in their hands except prhaps sticks. The Tbakurs gave orders for the demolition of a mud-wall. Upon this the Chaubeys interfered and begged that the matter be referred to Court. Words ensued and then blows, and almost immediately Laltu fired at Ajudhia on the Thakur side and shot him dead on the epot. Upon this all ran away. Eershaw C, J. and Knox J. observed:

The use of force in defence of property by private Individuals is a matter defined by Ian. The presence of Laltu with his gun. unexplained as it is by any evidence for the defence, proves that the Chaubeys were prepared to defend this mud-wall even to the voluntarily causing of death; and the burden lay heavily upon them of proving chat they acted under reasonable apprehension that death or serious hurt would bothe oonsequenoa if the right of private defence were not exercised. The harm intended was so slight that persons of ordinary genae and temper would

have and should hare refrained from taking the law into their own hands....The fact that 10 or 50 persons began the attack and that lifter the attack began, Lattu fired a shot which struck Ajudhia is not enough to show that Lalta was justified in firing. Laltu had to prove that he had reason to apprehend that the Brahmins might be killed. He gave no evidence of this, or of facts from which we could be ld it proved.

As in that case death was caused by firing the action could be justified only if the case fell within the purview of Section 103, Penal Code. That eeocion runs as follows:

The right of private defence of property extends, under the restrictions mentioned in 8 99, to the voluntary causing of death or of any other barm to the wrong-doer, if the offence the committing of which, or the attempting to oommit which, occasions the exercise of the right, be an oSence of any of the descriptions hereinafter enumerated, namely: -

Firstly. Robbery;

Secondly. - House-breaking by night;

Thirdly. - Mischief by fire committed an any building, tent or vessel, which building, tent or vessel is used as a human dwelling or as a place for the custody of property;

Fourthly, - Theft, mischief or house-trespass, under Mich circumstances as may reasonably cause apprehension that death or grievous hurt will bothe consequence, if such right of private defence is not exercised.

The facts of that case did not show that any of the offences mentioned in Section 103, Penal Code, were attempted or threatened to be committed by the Thakurs and, therefore, the Chaubeys had no right to cause death. The Chaubeys were rightly held guilty of murder, their case not being covered by exception 2 to 9. soo, Penal Code, inasmuch as they had intended to do more harm than was necessary for the purpose of defence. Their Lordships, however, went on to quote from a passage from the unreported judgment of (Sir John Edge in Queen Empress v Eupa (Ori, App. NO. 380 of 1897, D/- 27-8-1897) that

when a body of men are determined to vindicate their rights or supposed rights, by unlawful foroe, 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 arises. Neither side is trying to protect itself, but each side is trying to get the better of the other.

As the case of Queen Empress v. Bupa (Ori. App. No. 280 of 1897, D/- 27-8-1H97) has not been reported I cannot say what its facts were. The proposition of law, as stated by Sir John Edge, i3 of course unquestionable. The important words in that dictum are 'Neither side is trying to protect itself, but each aide is trying to get the better of the other. The enquiry, therefore, in every case has to be whether the accused were trying to protect themselves or their property, or whether they were trying to get the better of the other Bide and to enforce a supposed right by use of force.

9. In King-Emperor v. Kaliji, 24 ALL, 148; (1901 a. w. n. 193) Banerji J. followed Queen Empress v. Prag Bat, 20 all. 459 : 1898 A. w. N. 117. The facts in that case were these: There was a plot of land belonging to one Bhuneahar Singh under the guardianship of two ladies, Mi Bekha and Mt, Earn Piari. The land had been sown with sugarcane on behalf of the ladies in the year 1808 P, that Earn Ghulam Singh and others claimed to bothe cultivators of that land on behalf of the zamindars, and that consequently a dispute arose between the party of the ladies and the party of Bam Ohulam Singh. The party of Ram Ghulam Singh came to the land and began cutting the sugarcane crop. The party of the ladies resisted Bam Ghulam Singh's party, and a lathi fight took place in which two persons sustained grievous hurt. The party of the ladies were convicted of th offence of rioting and their conviction was upheld by Banerji J. The finding of the Magistrate, which was approved by his Lordship, was that the ladies' party had resolved beforehand to make an assault under the pretence of cutting the sugarcane, that they had gathered together at a Earkhana under one leader and that after holding a consultation together they proceeded to the . spot where Ram Ghulam Singh's party was cutting the sugarcane crop and there a fight took plaoe. His Lordship differed from the case of Pachkaun v. Queen Empress, 24 Cal. 686 : (l 0. w, N. 423), and distinguished the case of Queen Empress v. Narsang Pathabhai, 14 be

m. 441. The finding that the accused did not really intend to protect the property but to assault the other Bide under the pretence of protecting their property was the crucial finding in the case and it exoluded the right of self-defence. Self-defence can only arise when it is exercised genuinely and . not as a mere pretence for inflicting injuries on others.- If this finding bad not been recorded the decision in that case would have been otherwise.

10. In Maniruddin v. Emperor, 85 Cal. 384 : 1 Cr. L. J. 874, it was observed that:

No right of private defence arises where a large body of men go armed and prepared and attack the opposite part; with intent to enforce their right or supposed right to certain lands

This general observation must be taken with reference to the facts of that case, as a case is an autherity only for what it actually decides and not for what would seem to flow from the general Observations used therein: Qinn v. Leathern 1901 A. 0.495 at 506 : (70 L.J.P.o. 76), per JJord Balsbury, Mahabir Singh v, Narain Tewari, 1981 A.L.J. 715: U.I.B (18) 1981 ALL. 490 F.B.); Punjab Co-operative Bank, Ltd. v. Commissioner, Income-tax, Lahore, A.I.R. (27) 1940 P. C. 380 : (I. li-K. (1910) Lab. 685). The facts of that aase were that there was a dispute between two parties about a piece of land. The complainant olaimed the disputed land having fallen on partition -to the share of the landlord; while the accused alleged that it had fallen to their share. The complainant had, previous to the date of occurrence, sown the crop in the disputed field and crop was growing. On the date of occurrence the accused proceeded to the field passing by the house of the complainant. They said to the complainant 'Come out Haramzada, you and year sons. I am going to the field.' The Court held that the accused went to the disputed land deliberately intending to fight and defied the complainant and his father to oome and oppose them; and that there was no occasion for their going to the field that day as the field had already been sown and was growing and that the petitioners were suddenly called on to protect their rights or supposed rights. There was no attempt on the date of occurrence to invade or encroach upon them and in any case they had plenty of time to have recourse to the autherities, civil, criminal and police, whom they deliberately ignored and took the law into their own

bands. The Magistrate held that the complainant was in possession and had grown a crop, and he accordingly convicted the accused. The lower appellate Court held that neither party was in exolusive or undisturbed possession of the land, but the accused's common object was to enforce their right or supposed right, and the appeal was dismissed. The High Court dismissed the revision. Upon the facts of that case, therefore, clearly the right of self-defence was excluded.

11. Similar observations were made in the case of Kabiruddin v. Emperor, 85 cal, 368 : (7 Or. h. J. 266).

12. In Emperor v. Ambika Lai, 35 oal. 448: S er.L. j. 6i), the complainant's party consisting of 12 or 13 persons went with.kiidaLis to a bund erected on the land of the master of the aacused in order to out it, as it obstructed the flow of water from their lands and destroyed their crops. the accused hearing of this at onoe assunbled to the number of 50 or 60, armed themselves with lathis and proceeded to the bund. At this time the complainant's party had either finished the cutting or ceased to do so, when they saw the accused approaching. The latter attacked the complainant's party and drove them to their village. One or more cf the assailants also beat a man, who was present there, but was not connected with the cutting of the bund, be to in the first attack and when they returned from the chase, and fractured his skull, in consequence of which he died shortly after. It was held that the accused were members of an unlawful assembly from the beginning, as they went armed with lathis and in large numbers to enforce their rights at all hazards, that if not so, at the beginning, they became unlawful assembly subsequently, and had not right of private defence, when the opposite party had ceased cutting the bund, and chat, even if they had, they exceeded their right by attaoking their opponents and chasing them and by beating the deceased. So far as the observations regarding the accused becoming an unlawful assembly later on when the opposite party had ceased cutting the bund and their exceeding the right of self-defence are concerned, there can be no doubt, But so far as the first observation is concerned that the accused were members of an unlawful assembly from the beginning, it may be said that the observation was justified beoause the accused's real intention was not to protect their property but to teach the other side a lesson, as it was wholly unnecessary to go armed with deadly weapons in such

large numbers. If the accused had not gone in such large numbers but had gone with a few men sufficient to chase away the complain, ant's party, I doubt if they' could have been said to have formed an unlawful body of men.

13. In Bhairosing v. Emperor A.I.R. (93) 1935 Nag. 141 : 36 Cr. L, J. 86l, it was held by Neogi A. J. C, that where each party anticipated resistance from the other and had fully prepared itself, the primary object of be to parties was to fight and the vindication of their right to property was merely a pretext and there could be no question of private defence. The facts of that case, clearly showed that there was no intention of protecting any property but that the real intention was to fight fox its own Bake.

14. In Satnarain Das v. Emperor 17 pat. 607 : (A.I.R. (25) 1938 Pat 518:39 Cr. L. J. 785), it was held that the right of private defence was no doubt an answer to a charge of rioting; but that there could be no right of private defence where the riot was premeditated on be to sides, unless the object of the assembly was shown to have been to repel forcible and criminal aggression. 'It must be remembered,' observed their Lordships.

that the light of private defence can be exorcised only in special circumstances and with the restrictions imposed by d. 99, Penal Code, The important considerations which always arise in order to determine whether ' the action of the accused ig covered by the right of private defence are, firstly, what is the nature of the apprehended danger and, secondly, whether there was time to have recourse to the police autherities, always remembering that where be to the parties are determined to fight and go up to the land fully armed in full expectation of an armed conflict in order to have a trial of strength, the right of private defence disappears.

In that case the findings were that be to the parties were out for a trial of strength; be to the parties arrived simultaneously in large numbers fully armed; they refused to listen to the remon. sfcrance of the Dafadar who asked them to wait till the arrival of the Sub-Inspector. No portion of the land was cultivated with any crop. There was no standing crop on the land anywhere. No property was in danger of being destroyed. No harm would have accrued if the parties had waited for the

police to whom information had already been sent. On these facts it was held that the right of private defence was excluded and that the real object of the accused was not to prevent aggression but to try out their strength by means of a pitched battle.

15. In Hariram Mahatha v. Emperor A.I.R. (29) 1942 Pat. 96 : 43 Cr. L. J. 4l the facts were that the complainant with his men had gone to plough a field to which he had a good title and of which his vendor had been put in possession. The field was unoccupied. The complainant's party was opposed by the party of the accused consisting of more than live persons, because one of the accused claimed that the field belonged to him. On objeotion by the complainant, the accused's party made a violent attack on his party with deadly weapons which resulted in the death of three of the complainant's party. It was found that the object with which the accused took the law into their own hands was clearly not to prevent either theft or mischief but to enforce their own right or supposed right to the land of which they were not in possession. It was held that the aocused had no right of private defence.

16. On the other band in the following oases the right of self-defence was upheld:

17. In Queen v. Sachee alias Sachee be ler, w. B. or. 112, there were three brothers Bakur Ally, Hyder Ally, and Suffer Ally, who inherit-ed from their father a right of oooupanoy, in certain land, and which, after their father's death, they divided into three shares, and held separately, The accused purchased the shares of Bakur and Hyder, and took possession soon after. However, he re-let to Hyder his share, remaining in possession of Bakur's share. the accused also claimed to have obtained a lease of Sutler's share and entered into possession of that share also. Suffer filed a complaint against the action of the aocused before a Magistrate, whieft,: however, he failed to substantiate. Fifteen days after Suffer had ceased to be in possession, an attempt was made to settle the matter by refer-ence to the neighbours. In the meeting of the neighbours Suffer proposed an adjournment to the spot where the land in dispute was situated. The accused opposed this, but Suffer and Bakur left for the disputed land declaring their intention to take possession of the disputed land. The accused also then left, and

passing the other two, was the first to reach the spot in question. In the affray which ensued Bakur, Suffer and the accused were all injured. Suffer died of the injuries he received, after 14 or 15 days. It could not be determined whether the accused was rightfully in possession, but that he had been in pos-session for 15 days was undoubted. It was held that the act of Suffer, in attempting to recover possession by force, was clearly illegal and that the accused had a right to resist and if Suffer used force in carrying out his intention, the aocused had a right to oppose force by force and to inflict upon Suffer such injury as was necessary to compel him to desist.

18. In Birjoo Singh v. Khub Lall and others 19 w. H. Cr. 66, a bund was about to be out by persons belonging to another village. The accused went there and was with the people who belonged to his own village, and who were endeavouring to prevent the cutting of the bund. The aocused joined the party of the villagers in the endeavour to prevent mischief being done to property which belonged to them. It was held by the Magistrate that it was no duty of the people of the village in which the bund was situated to offer no opposition to the cutting of the bund or to go away and seek the Magistrate, who might be at a great distance, and obtain an order from him, and if they failed in that they were to be left to a civil suit to recover com-pensation for the injury to their crops from persons whom it might be difficult to identify as these who actually committed the mischief, and from, whom, if identified, it might not be possible to recover the amount of the compensation. It was held that the accused had committed no offence.

19. In Shunker Singh and others v. Bwmah Mahto and others, 23 w. B. Or, 26, the facts found were that Bamdhon and others, from Paohgaohia, went to see that no one interfered with the passage of their water, intending.if necessary, to use force, as they could hardly expect that verbal remonstrance would be of much effect, and then the Amba people came to stop the water with a like intention, whereupon a disturbance ensued, and on two of the Paeh-gaohia people being somewhat severely hit, be to parties retired, being afraid that the two men were killed. The Magistrate said that be to parties had, as their common object, to enforce their right or supposed right by show of force and that, therefore, they formed an unlawful assembly. The Court held that the Pachgachia people had gone there not

to enforce a right or Supposed right but to maintain a right of which they were in enjoyment from before and that they had every right to do so. It was observed:

Every one has a right to protect himself in the actual enjoyment of his property, and In the actual exercise of his rights, unless the case be such that el. (3) of Section 99, Penal Code, applies, that is, where there is time to have recourse instead to the protection of public autherities, in which case there is no right of private defence. The Magistrate, no doubt, Bays, as regards the right of self-defence of property: 'I do not think, considering the police outpost was only two miles distant, that the danger was sufficient to justify the resort to force'; but he cornea to no findings as to how long the Pachgachia people were aware of any intention on the part of their opponents to interfere with the passage Of this water, which they themselves went to prevent if necessary. Altheugh the outpost was only two miles off, it might bothat the parties had not time to send for and get the assistance of the police soon enough to anticipate the coming of their adversaries. They had at any rate the right to go to the ground themselves, and at most they would be be und to refrain, even in their own defence, from using force against the other side until the police autherities could come up, provided the circumstances were such that the police might have been brought upon the spot in time. They were not be und under all circumstances to stand quietly by, while their opponents wrongfully and by force committed serious mischief.

20. In Queen Empress v. Narsang Patha-bhai, 11 be m. Ml, accused 1 had received information one evening, that the complainants intended to go on his land on the following day and uproot the javari seed sown in it. At about 8 O'clock next morning he was informed that the complainants had entered on his land and were ploughing up the seed. Thereupon he at once proceeded to the spot, followed by the other accused, and remonstrated with the complainants. The complainants, witheut paying any attention to his remonstrances, commenced an attack on the accused. In the fight which ensued, be to sides received serious injuries, and the leader of the complainants' party was killed. It was held that the complainants were the ag-gressors and that the accused had a right of private defence, be to of person and of property and that in the exercise of this right they did not inflict more harm than was necessary. Bird-wood J. held that the right of private defence of

property commences when a reasonable apprehension of danger to the property commences. Before such apprehension commences, the owner of the property is not called upon to apply for protection to the public autherities. When the accused was awakened at 3 or 4 a. m., and received definite information of the actual presence of the complainants on his land, he was entitled to go at once to protect his property. If the house of a police officer fell in the way to the field, then it would have been the duty of the accused to ask for the protection of the village police. He had a right of self-defence of property because if he had delayed in reaching the field, the very mischief thereatened to his property would have been completed, and the seed which he had sown would have been ploughed up.

21. In Pachkauri v. Queen. Empress 24 Oal. 686 : (10. W. N. 423) the accused on receiving information that the complainant's party were about to take forcible possession of a plot of land, which was found by the Court to be in the possession of the accused, collected a large number of men, some of whom were armed, and went through the village to the land in question. While they were engaged in ploughing, the complainant's party came up (some of them being armed) and interfered with the ploughing. A fight ensued, in the course of which one of the complainant's party was grievously wounded and subsequently died, and two of the accused's party were hurt. It was held that if the accused were rightfully in possession of the land and found it necessary to protect themselves from aggression on the part of another body of men, they were justified in taking such precautions as they theught were required and using such force or violence as was necessary to prevent the aggression.

22. In Queen Empress v. Shamsher Khan (1896) A. w. N. 170 the accused.had granted a lease for manufacturing aalt-petre to one Kewal Chamar. A certain Syed had lately purchased a share in the village. This Syed and other Syeds attempted to assert their possession by removing some salt-petre from the possession of Kewal Chamar. They were resisted by the Mewatis (accused). It was urged that the Mewatis were deprived of the right of private defence of property inasmuch as they could have applied to the public autherities. It was held that since there was a danger of the Syeds carrying off the salt-petre, while the accused went to the thana, the accused had a right of reclaming their property by force.

23. la Chandulla Sheikh and others v. Emperor A.I.R. (l) 1914 cal. 623; (16 Cr. L. J. 209) the accused were In peaceful occupation o certain land. The complainant party began to erect some huts on the land stealthily in the darkness of the night. At day break the accused, on coming to know what was happening, came to the place fully armed in order to drive oft' the trespassers. The result was that there was a free fight between the parties in which be to Bides were wounded. It was held that as the accused were in actual physical possession of the property in question, as they took the earliest opportunity to exercise the right of private defence, as they had no time to have recourse to the public autherities and as the injuries inflicted by them were within the limits allowed to the right of private defence they were not guilty of rioting. Their Lordships distinguished the case in hand from a oise in which the accused had allowed some time to elapse before they tried to drive out the trespassers. Their Lordships held that the party dispossessed loses the right of private defence if he . has acquiesced in his dispossession. But a mere trespasser cannot, by the very act of trespass, immediately and without acquiescence give himself What the law understood by possession against the person whom he ejects and drives him to produce his title. (1) Browne v. Daivson (1840) 113 E. Rule 95O : (12 Ad. & El. 624).

24. In Jageshar Bai v. Emperor 15 A, L. J. 47 : A.I.R. (4) 1917 all. 119: laCr. B. J. 663) one Jageshar Eai lawfully and legally obtained possession of certain land and he sowed on it Babi orop. One Bal Kishen in bad faith and dishonestly with a party of men went upon the land and commenced to cut the crops for the purpose of removing them. When Jageshar Rai was informed of this, he in company with a band of men, went to the spot to protect his property. A fight ensued in which, however, very slight damage was done to anybody. The learn-ed Sessions Judge had suggested that the accused had plenty of time to go on to the police station and to make a report of theft. Tudball J. held that it was true that they had ample time to do that but that would have been of very little use so far as the protection of the property was concerned. The damage and loss would have been completed before the police could have arrived. His Lordship distinguished the case of Queen.Empress v. Prag Dat, 20 ALL. 459 : 1898 A. w. N. 117 and observed that the case before him was not one in which the opposite party were merely ploughing up the land and preparing it for sowing. In the latter case, no damage

would be done and there was ample time to have recourse to the protection of the public autherities for the enforcement of their right. In the case before his Lordship, property was actually being cut and damaged. If the applioants had gone to the police station and returned with the police help, the damage would have been oompleted. '

25. In Fouzdar Bai and others v. Emperor A.I.R. (5) 1918 Pat. 198 : J9 Or. L. J. 241, distinguishing the easea of Kabiruddin v. Emperor 85 Cal. 368 : (7 Cr. L. J. 2S6) and Maniruddin v Emperor 35 cal. 384 : (7 Cr.L. J. 874) their Lordship observed:

Where a person in possession of property sees an aotuul invasion of his rights to that property, if that invasion amounts to an offence under the Code, he is entitled to resist it by force and to collect for that purpose such numbers and Such arms as may be absolutely necessary for this purpose, provided only that there is no time to have recourse to the protection of the police authorities.

Their Lordships observed that the accused had no time to go to the Thana to make a complaint because in the meanwhile their crops would have been removed before the police could arrive on the scene.

26. In Emperor v. Hira and others 45 ALL. 250 : (A.I.R. (10) 1923 ALL. 194 24 Or. L, J. 189), the complainants had been in unlawful possession of certain plots of land, for a number of years, leased out by the zamindari to the accused. On the date of the incident the accused were in peaceful possession of the land and were engaged in ploughing one of the fields. Thereupon the complainants in a large body came up armed with lathis and attacked the accused, who called for assistance to the cultivators from the neighboring fields who rushed up. They all had lathis with them and they resisted the very deliberate and prolonged attaok made on them by the complainants. Considerable injury was caused to persons on be to sides and Ali, the leader of the complainants' party, ultimately succumbed. The learned Sessions Judge had stated as his opinion:

It is Quite Immaterial whether the zamindar's men were ploughing and were attacked by Alli'e supporters or whether Alii's supporters were ploughing and were

attacked by the zamindar's men or whether be to 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 be to sides intended to make a fight of it.

He had based his opinion on the finding that the zamindar's men had also from before organised their supporters as they had taken precaution to take with them lathis and to see that the men engaged in work on the neighbouring fields were also armed because they knew from their experience of the past some time or other they would be attacked. Upon these, findings, Ryves J. held that the accused had a right of self-defence. his Lordship distinguished the case of Queen-Empress v. Prag Dat, 20 all. 459 : (1898 A. W. N. 117) observing that the head-note of the case was misleading His Lordship observed:

It sometimes happens that two parties make the possession of a field or a tree the pretest for a fight and then go out armed to Bee who are the better men. In Such oases, as pointed out in Prag Dat's case, (20 All 469: 1898 A. W, N 117), obviously there is no right of private defence. It is a duel between the parties and nothing short of it. There are some oases 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.

His Lordship further held that the right of private defence was not exceeded because:

If a man is entitled to protest his own life by using a lathi, it is impossible to weigh the force of the blows which be uses for that purpose, as it is said, 'in golden scales' and to adjudicate with great nicety as the exact amount of force which would be justified. This, of course is provided that no undue advantage is taken.

27. In Nareshi Singh v. King Emperor, 2 pat. 595: A.I.R. (11) 1924 Pat. 388:(25 Cr. L. J. 1228) a serious 6ght had taken place between the inhabitants of Mauza Gopalpur on the one hand and Mauzas Chainpurwa and Naraon on the other. It had resulted in the death of five per. sons. Some buffaloes and cows belonging to the residents of Ohainpurwa and Naraon had trespassed into the maize and arhar

field o.f Mukh-ram Singh, resident of Gopalpur. Mukhram Singh was taking the cattle to the cattle pound. He feared an attack by the other side and so he colleoted reinforcements waiting with the cattle at a certain place meanwhile. Then the other party came and there was a free fight. Kabtr-uddin's case 85 cal. 368 : (7 Cr. L, J. 256) was cited to show that this was a case of free fight and the right of self-defence was excluded. Their Lordships distinguished Kabiruddin's case 85 Cal.-368 : (7 Or. L. J. 256) on the grounds, firstly, that in that case the question of possession was in dispute, and secondly, that there was sufficient time to inform the autherities, Their Lordships further observed:

Where, however, possession is undisputed or where there is no time to seek the assistanca of the autherities, Icannotagree ttaatthereis any obligation upon a person entitled to exercise the right of private defence and to defend his person or his property, to retire from the field merely because his assailant threatens him with violence. I see nothing wrong on the part of the Gopalpur men in awaiting the coming of tbeir antagonists and in maintaining their possession of the cattle which they bad lawfully seized. The law did not require them to retire as soon as Deonandan and Jaji {men of Chainpurwa and Naraon) went away to fetch re-enforcements.

28. In Ajudhia Prasacl and others v. Emperor : AIR1925 All664 , there was a long-standing enmity between Group A and Group B. The ring-leader of Group B was one Hardwari. Two days before the incident a member of Group A had been severely injured. Group & were, therefore, vengeful and resentful They gathered at the sitting-room of a person called Dwarka about midday or in the early afternoon. News of this gathering was communicated to Hardwari, ring, leader of Group B. On learning this Hardwari felt it prudent in the circumstances to get his brothers and friends also to come to his threshing-floor. The fight took place because an advance was made by Group a towards the threshing floor of Hardwari, and the fight took place on a piece of waste ground belonging to Hardwari and at a distance of about 40 paces from the sitting-room of Dwarka and about 30 paces or less from that of Hardwari. There was some preliminary abuse and a reference by Ajudhia Prasad, the ring, leader of Group A, to what had been done to a member of their party two days previously. A member of Group A, fired a pistol and hit a

member of Group B, and thereupon Hardwari, the leader of Group B, grasped a pistol and fired it in the direction of and in fact hit Jangi, the -person who had fired the pistol, out of Group A. Thereupon a lathi fight became general as a result of which one person of Group A was seriously injured and he died the same day. Group B had not taken the plea of self-defence in the lower Court. It was-taken on their behalf for the first time in appeal in the High Court. The plea of self-defence was entertained and it was held that Group B acted in self-defence and were not guilty of any offence.

29. In Abdul Hadi and others v. Emperor : AIR1934 All829 , several co-sharers were in con-structive possession of joint land which was lying parti. One of the co-sharera employed men to dig a part of the land with a view to appropriating it for his exclusive use in the teeth of opposition by the other co-sharers, who forcibly prevented them from digging the land and thereby inflicted slight injuries. Niama-tullah J. held that one of several co-sharers in constructive possession of joint land had no right to dig part of it with a view to appropriating it for his exclusive use and that such act on his part amounted to criminal trespass or mischief, and that the other co-sharers were entitled to prevent his men from digging and on their per. sisting in doing what was clearly unlawful, the other co-sharers had a right to prevent them foroibly from digging the land and to inflict slight injuries in their right of private defence. It was argued that the diggers had ample time to seek the assistance of police before beating the other side. This argument was repelled. It was observed that.

if the act of mischief has already begun, there is more than an apprehension of danger to the property and the right of private defence has already arisen, it is not expected that a person entitled to exercise it should have recourse to the protection of the public autherities. He is entitled, In view of the immediate danger of Injury, to defend it by exercising his right instead of having recourse to the public autherities.

I think, theugh the observations of the learned Judge are rather wide, what His Lordship meant to say was that where injury was actually being done to the property of another that other was not be und to seek the aid of public autherities

and was entitled to stop the mischief that was being done to his property himself.

30. In Summa Behera and others v. Emperor A.I.R. (32) 1945 Pat, 283 : (46 Cr.L.J. 672), the accused were in possession of a mango tope which belonged to them for fifteen or sixteen years. A and his men, one morning entered the tope, pluoked mangoes, ploughed a portion of the land and went away. On hearing of this incident the acoused collected a large number of persons about a furlong from the mango tope. Thereupon A and his men came again armed to the tope and challenged the accused to come and pluok mangoes at their risk, whereupon a fight ensued in which A and his party were the aggressors. A number of injuries were caused to men on be to sides and two of the men of a's party were killed. It was held that the accused had a right of private defence of person and property. The learned Judges (Sinha and Das J J.) observed:

It la Dot the law that the rightful owner in peaceful possession of a piece of property must run away, if there is an actual invasion of his right and an attempt on his person, A number of cases relating to the right of private defence of person and property have been reviewed in Satnarain Das v. Emperor, 17 Pat. 607 : (A.I.R. (25) 1988 Pat. 518: 39 cr. L. J. 785). It has been pointed out there that there are cases in which the person in possession of property is entitled to defend himself and his property by force and to collect such numbers and such arms as are necessary for that purpose, if he sees an actual invasion of his rights, which invasion amounts to an offence under the Penal Code, and when there is no time to get police help. It is lawful for a person, who has seen an invasion of his rights, to go to the spot and object. It is also lawful for such person, if the opposite party is armed, to take suitable weapons for his defence.

It is not necessary to review other cases on the point.

31. It seems to me that the expression 'there is no right of private defence when two parties arm themselves for a fight' is misleading. Whenever there is a fight between two factions, one . has to discover (a) whether there was an apprehension to the accused's person or property by an attempt or threat to commit an offence against them such as is mentioned in 8. 97, Penal Code, and (b) whether the danger was so trivial or unsubstantial that if recourse were had to

the public autherities for protection no more serious injury than had already been in-flicted would result by waiting for the help of the public autherities. As a result of the consideration of the autherities cited by me above, several propositions can be laid down:

(a) There can be no danger to property if the acoused is not in possession. If he has merely a bare title to the property, his remedy is to seek possession from a Court of law and not to enforce it by force himself.

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

(c) The accused may have lost possession but if immediately on coming to know of the other side having entered on his land or taken posses, sion-of his property he rushes to oust the tres. passer, he is entitled to a oust him by force. He is not be und to have recourse to lengthy process of a trial in a civil Court. But this rule cannot be applied to a case in which the trespasser has already peacefully established himself in the enjoyment of the property for some time.

(d) If, however, there is no question of per-manent deprivation of one's possession over property and the question is of infringement of enjoyment of a mere right over property, then in that case, unless the injury to be caused by the obstruction of the enjoyment to one's right is expected to be enhanced if recourse is had to public autherities for protection, one is be und to take Such recourse.

(e) In every case, however, if one is already in possession of one's property or in enjoyment of a right, one is entitled to reach the spot earlier than the other party with arms and reinfor. cements and to wait in readiness to defend such property or right from the expected aggression from the other side.

(f) If the information of the expected aggression is of a definite kind it would be proper for the party in possession to inform the public autherities and seek their help but one is not be und to seek such help unless an apprehension of danger to

such property has actually commenced.

(g) If the apprehension of danger has actually commenced and if one can have recourse to the public autherities before an actual injury is caused to the property or right, he must do so, or else he will lose his right of private defence. This contingency usually arises when one has got definite information about the other side proceeding towards the land in dispute and the public autherities are within such a reach that one could inform them before actual damage to the property is done, e. g., -when the police station falls on the way to the land in dispute and the accused can inform them while proceeding towards it for its protection.

(h) When a fight takes place not because property or person has to be protected but because parties want to measure their strength, and pro. tection of property is merely a pretext, no ques. tion of self-defence arises, but this finding can fee arrived at only when the possibility of either party fighting for the protection of his property has been excluded.

(i) When the determination to fight is bona fide in the desire to protect one's property, that would not be a case in which it can be said that the right of self-defence is excluded. In this con-aeotion, it would be important to note whether one is fighting for maintaining one's possession or maintaining one's enjoyment of a right which has been enjoyed for some time previously, or one tries to obtain possession of a property which he thinks belongs to him, or to enforce a right which may be his but which he had never enjoyed before. In the latter class of oases there is no right of self-defence. In the former class of oases there is.

(j) Again, where a fight takes place in an open field, not on or near the property to be protect, ed but far away from it this fight cannot be said to be one for the protection of that property and there will be no right of self-defence in such

(k) Again, where one party challenges the other party for a fight then also the right of private defence is excluded, even theugh the fight be near or on the property. One is, however, entitled to say to the aggressor 'if you attack you will be met by force,' but it would be challenging another to fight if one were to abuse him and say 'come on, try strength if you like.'

(1) Where there is a dispute over ownership or possession of property and parties quarrel, and there is an exchange of abuses, but the party out of possession has neither attempted or threatened to take possession immediately, nor attempted or threatened to cause injury to the party in possession, the party in possession has no right to strike first, and if he does so, he gives the other party the right to strike back in Self-defence.

32. In the present case, according to the pro-secution evidence itself, it was the deceased him-self who attempted to strike the first blow. The accused,-therefore, at once were in danger of an injury being caused to their persons. They clearly, therefore, obtained a right to strike in self-defence. The attempt to strike by the de-ceased was no doubt preceded by an exchange of abuses. An exchange of abuses on be to sides does not give any of them a right to strike the other by a lathi. No danger to person arises when one is merely abused, and as such no right accruea to the peraon abused to strike another with a lathi. If, however, abuse is accompanied by a threat to assault, it would be another matter. There is no evidence of that having happened in the present case, It was, therefore, not a case of two people having oome pre-determin-ed to fight and measure strength, but was a case in which, as usual, there were bickerings over a cattle trough and exchange of abases. This conferred no right on the deceased to attempt to strike the accused in the first instance and as such the counter attack by the accused would be deemed to be in self-defence.

33. The learned Sessions Judge has also ex. pressed the opinion that even if the accused had a right of private defence they exceeded the right. The medical report show3 that Basant accused received two lathi blows, one of them be. ing on the head. The deceased, therefore, had aimed and actually struck a lathi blow on the head and he was successful in inflicting two lathi blows, He received five lathi blows in return, __ one on the head, which proved fatal. I cannot in the circumstances hold that the accused ex. oeeded any right of self-defence. There is no evidence to show that the accused went on beating the deceased even after he had fallen down. When once a right of self-defence has commenced one is entitled to protect one-self by disabling the aggressor to such an extent that he may be rendered unable to resume his attack. In the present case, since the deceased

had aimed an injury on the head there was danger of death or grievous hurt being caused to the accused and they had the right to cause such injuries as might cause the death of the deceased. It is difficult to measure the strength or the force of blows or to modulate one's attack so long as the other party continues fighting. I, therefore, hold that the accused did not exceed the right of private defence.

34. The result, therefore, is that I allow the appeal and set aside the conviction and sentence passed by the learned Sessions Judge and order that the accused shall be set at liberty unless required in connection with some other case.

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