

Danney Khan and ors. Vs. the State

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Court : Allahabad

Decided On : Jul-24-1958

Reported in : AIR1959All453; 1959CriLJ909

Judge : B. Mukerji and ;H.P. Asthana, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 149 and 302

Appeal No. : Criminal Appeal No. 864 of 1958 (Referred No. 65 of 1958)

Appellant : Danney Khan and ors.

Respondent : The State

Advocate for Def. : Govt. Adv.

Advocate for Pet/Ap. : A.P. Singh Chauhan and ;M.H. Beg, Adv.

Disposition : Appeal dismissed

Judgement :

H.P. Asthana, J.

1. This is an appeal from the judgment of the 1st temporary Civil and Sessions Judge, Bareilly, convicting the appellants under Sections 302 and 323 read with Section 149, I.P.C. They have each been sentenced to 3 months' rigorous imprisonment under Section 323/149 I.P.C. Danney Khan and Naushey Khan

have each been sentenced to death under Section 302/149 I.P.C. and the rest to imprisonment for life under that section. Except Banney Khan, they all have been further convicted under Section 147 I.P.C. and sentenced to one year's rigorous imprisonment. Banney Khan has been convicted under Section 148 I.P.C. as he is alleged to have been armed with a bhujali, and has been sentenced to one year's rigorous imprisonment.

There were in all 11 accused in this case who were put on trial under Sections 147, 148 302/149 and 323/149 I.P.C. Four of them, namely, Jhabbu Khan, Amir Khan, Kaley Khan and Saeed Khan, have been acquitted on the various charges levelled against them. Along with this appeal there is also before us the usual reference by the learned Sessions Judge for the confirmation of the sentences of death passed against Danney Khan and Naushey Khan.

2. The accused Danney Khan, Banney Khan and Naushey Khan are brothers and sons of Mohammad Khan. The accused Aslam Khan, Dilsher Khan, Ismail Khan and Mohammad Husam are said to be the friends of Danney Khan. Except Mohammad Husain, who is a resident of village Nagla in the district of Bareilly, the remaining accused are all residents of the same village Aspur Khera also within the same district. It appears that Danney Khan, Banney Khan and Naushey Khan were the tenants of the plot No. 292 in village Khera. They had given this plot on lease to Tota Ram about 10 or 12 years before the occurrence and had executed a registered deed of lease in his favour.

It may be mentioned that Tota Ram (P. W. 2), Bholey, Janki Prasad and Sohan Lal are members of a joint family and they had all been cultivating the aforesaid plot after having obtained the lease. It is alleged by the prosecution that after the expiry of the period of five years, for which the lease of the said plot had been given to them, they continued in possession of the said plot and became its adivasi when the Zamindari Abolition and Land Reforms Act came into force, that after Tota Ram became adivasi he stopped paying rent to Banney Khan and his brothers and began to pay it to the Government.

It is further alleged that in 1956 Tota Ram had sown sugarcane crop in this plot, that Banney Khan and his brothers began to disturb his possession and wanted to

forcibly cut the sugarcane crop which stood in the plot and thereupon Tota Ram started proceedings under Section 145 Cr.P.C. which ended in his favour on 2-7-1956. During the proceedings under Section 145, Cr.P.C., Banney Khan and his brothers forcibly cut half portion of the sugarcane crop which was under attachment. In 1957 Banney Khan and his brothers applied for the correction of village papers in respect of the said plot but their application was dismissed. After the dismissal of this application Banney Khan and his brothers forcibly cut the crop of Tota Ram which stood in this plot.

They also asked Tota Ram not to go near the plot in dispute and threatened to kill him if he went there. In 1957 Tota Ram had sown jowar and arhar crop in the disputed plot. Banney Khan and his brother reploughed the plot in dispute and thereby destroyed the crop which had been sown in it. On 5th August 1957 at about 2 P.M. Tota Ram was constructing the 'maind' of the disputed plot and Janki Prasad, Sohan Lal and Bholey were ploughing and sowing it. It is alleged that the accused came to the plot in dispute. Banney Khan was armed with a bhujali while the rest were armed with lathis. Banney Khan, Danney Khan and Naushey Khan beat Janki Prasad with lathis and bhujali. The remaining accused beat Sohan Lal and Bholey and caused injuries to them. Tota Ram was at a distance in one corner of the field, and was not attacked by the accused. He raised alarm which attracted the attention of the persons who were working in the nearby fields. They came to the help of Tota Ram and others and thereupon the accused went away.

3. The report of the occurrence was made by Sohan on the same day (5th August 1957) at 4.30 P.M. It was registered under Section 147/307 I.P.C. and all the 11 accused were named in it. Tota Ram, Bholey and Janki Prasad also went to the police station with Sohan Lal. Janki Prasad, whose condition was serious, was taken there on a cot. After the report Sohan Lal, Bholey and Janki Prasad were sent to Baheri Dispensary for medical examination and treatment. Janki Prasad died on the way and his dead body was taken to the Dispensary. Information of the death of Janki Prasad was sent to P.S. Deorania and thereafter the charge was amended to one under Section 302 I.P.C.

The inquest report of the dead body of Janki Prasad was prepared at the police station and thereafter it was sent to Bareilly for post mortem examination. Sohan Lal and Bholey were examined by Dr. Sri Ram Saxena, Medical Officer, Baheri dispensary, on the 5th August 1957 between 7.30 and 8 P.M. Bholey had 2 injuries, one of which was a contused wound 1/2' x 1/8' x skin deep on outer aspect of left forearm 3 1/2' above left wrist joint, and the other was a bruise 2'x1' on back aspect of left leg in upper part 4' below the left knee joint. Both these injuries were simple.

Sohan Lal had four injuries consisting of a contused wound 2 3/4' x 1/4' x 1/4' deep on right side of head, back aspect, in upper part near the tuft of hairs 4' away from the right ear, a bruise 3 1/2' x 3/4" on outer aspect of right arm in upper one-third part, a bruise 3 1/2' x 3/4' on right side of back 2' below the right axilla and another bruise 6' x 1' on right side of back in upper 1/2' part. All these injuries were simple.

4. The post mortem examination on the dead body of Janki Prasad was performed on 6-8-1957 at 11.21 A. M. by Dr. M.U. Khan, Civil Surgeon, Bareilly. He had the following external injuries on his person:

1. Star-shaped contused wound 2' x 1 1/2' x bone deep on forehead 1' above right eye-brow with the bone underneath depressed and fractured.
2. Contusion with abrasion 1 3/4' x 1/2' on right temple.
3. Contusion with abrasion 2' x 1/2', 1' from injury No. 1 to the right.
4. Contusion 3 1/4' x 1 1/2' on right side, a little behind and below the right ear.
5. Incised wound 2 1/4' x 1/2' x bone deep on the face on left side downwards. 'Mandible' bone was cut. The front end of the wound was tapering down,
6. Contusion 2 3/4' x 1/4' on the back of the left forearm.
7. Contusion 2 1/2' x 3/4' on the right ear.

The internal examination revealed that there was dark clotted blood in the scalp tissues practically all over the vertex and there was a depression and fracture in

the frontal bone the diameter of which was 1 1/4'. There was also depression and fracture in the right parietal bone and the joint of the parietal and occipital bones on the right side was broken. Death was due to the head injuries which had been caused by some blunt weapon like lathi. Injury No. 5, which was an incised wound, had been caused by some very sharp-edged weapon.

5. The accused Banney Khan, Danney Khan and Naushey Khan admitted that they had let out the plot in dispute to Tota Ram for a period of five years and had executed a lease for it, that after the lease Tota Ram came in possession of this plot and remained in possession of it for five years, that after the expiry of the period of lease they came in possession of the said plot and had been cultivating it. They denied that Tota Ram continued in possession of the said plot after the expiry of the period of lease.

They also denied that Tota Ram after the expiry of the period of lease sowed any crop in the said plot or that they wrongfully cut it. They admitted that proceedings under Section 145 Cr.P.C. had been brought against them by Tota Ram and those proceedings terminated in favour of Tota Ram. They further admitted that they made an application for the correction of village papers in respect of the said plot but their application was dismissed. They, however, stated that in spite of the legal proceedings which ended in favour of Tota Ram they continued in possession of the said plot and that Bholey, Janki and Sohan Lal wanted to disturb their possession and stop them from sowing the Field and when they did not listen to it they started beating Banney Khan and Danney Khan and it was in their self-defence that they used their lathis and inflicted injuries on Janki Prasad, Bholey and Sohan Lal. The accused Naushey Khan denied his presence on the scene of occurrence. The remaining accused also denied their presence and stated that they had been falsely implicated on account of enmity.

6. The prosecution examined eight eye-witnesses of the occurrence, including the injured SohanLal and Bholey, and Tota Ram. The remaining live witnesses were Mulu, Behari, Har Prasad, Jiwan Ram and Dharajeet, who according to their evidence were working in the neighbouring fields and reached the scene of occurrence on hearing the alarm raised by Tota Ram. Besides these witnesses the

prosecution also filed a number of documents in order to prove the possession of Tota Ram and his family members of the disputed field at the time of the occurrence.

These documents included the canal receipts in respect of the canal dues which had been paid by Tota Ram in respect of the said field. The other documents were the entries in favour of Tota Ram over the disputed field in the village papers such as Khasra and Khatauni of the years subsequent to the period for which the lease had originally been granted in favour of Tota Ram.

7. The accused in their defence examined two witnesses, namely, D.W. 1 Gharib Khan and D.W. 2 Shahzadey. None of these two witnesses deposed about the actual possession of the accused Banney Khan, Danney Khan and Naushey Khan over the said plot. They also did not file any documentary evidence in proof of the fact that Tota Ram after the expiry of the period of lease had surrendered possession of the disputed plot and that Banney Khan and Danney Khan and others cultivated it and were in possession of it,

8. The learned Sessions Judge on a consideration of the entire evidence was not satisfied about the presence of Jiwan Ram and Dharajeet on the scene of occurrence and he, therefore, did not rely on their evidence. He, however, did not see any reason to disbelieve the evidence of the other eyewitnesses or the documentary evidence which had been filed on behalf of the prosecution in support of the possession of Tota Ram on the day of occurrence. He, therefore, found that Tota Ram continued in possession of the said plot even after the expiry of the period of the lease and became its adivasi when the Zamindari Abolition and Land Reforms Act came into force, that Banney Khan, Danney Khan and Naushey Khan had been trying to disturb his possession and compel him somehow to leave the said plot but they were unsuccessful and ultimately they, along with the other appellants who were friendly with them, resorted to force and wanted to dispossess Tota Ram forcibly and with that object in view they went to the said plot on the day of the occurrence and beat Janki Prasad, Sohan Lal and Bholey and caused the death of Janki Prasad and simple hurt to Sohan Lal and Bholey.

He was also satisfied from the evidence on the record that the fatal injuries on Janki Prasad, which were on the head, were inflicted by Danney Khan and Naushey Khan who were armed with lathis and the incised wound by Banney Khan who was armed with a bujhali. He, therefore, sentenced Danney Khan and Naushey Khan to death and the rest of the accused to imprisonment for life under Section 302/149 I.P.C.

9. It has not been disputed before us that there was a dispute between Tota Ram on one side and Banney Khan, Danney Khan and Naushey Khan on the other over the said plot No. 292 which had been taken on lease by Tota Ram. It has also not been disputed that there were proceedings in respect of the said plot under Section 145 Cr.P.C. and that these proceedings terminated in favour of Tota Ram in 1956. Tota Ram was held to be in possession of it. There is nothing on the record to show that after the proceedings of the case under Section 145 Cr.P.C. Banney Khan and others filed any civil suit to establish their possession over the said plot.

It is further admitted that the entries in the revenue papers in respect of the said plot were in favour of Tota Ram and an application was made on behalf of Banney Khan and others for the correction of those entries probably on the ground that they were incorrect and did not represent the true state of affairs. But that application was also dismissed which shows that the possession of Tota Ram was upheld. There can be no doubt that when Banney Khan, Danney Khan and others became unsuccessful in the legal proceedings they resorted to force and wanted to dispossess Tota Ram forcibly. The prosecution examined a large number of witnesses in support of their contention that Tota Ram continued in possession of the plot even after the expiry of the period of lease and cultivated it and that on several occasions the accused in order to harass Tota Ram wrongly cut the crops which had been raised by Tota Ram in the said field.

There can be no doubt about the presence of Sohan Lal and Bholey on the scene of occurrence. Their presence was admitted by two of the accused, namely, Naushey Khan and Danney Khan, in their statements before the learned Sessions Judge. Tota Ram was a member of the joint Hindu family with Sohan Lal, Bholey

and others and his presence on the scene of occurrence appears to us to be very probable. We have also seen no reason to discard the evidence of Mulla P. W. 4, Behari P. W. 10 and Har Prasad P. W. 11 who according to their evidence have got their fields in the close vicinity and were working in them at the time of the occurrence. Nothing has been brought out in the cross-examination of any of these witnesses to show as to why they had given an incorrect version of the occurrence.

We are not inclined to accept the statements of the accused Danney Khan and Naushey Khan that they were assaulted by Janki Prasad, Sohan Lal and Bholey while they were sowing the disputed field and it was in their self-defence that they inflicted injuries on Janki Prasad, Sohan Lal and Bholey. According to the statements of both Danney Khan and Naushey Khan they received injuries but there is nothing on the record to show that they had any injuries on their persons. They did not get themselves even medically examined.

10. We have also seen no reason to disbelieve the documentary evidence which has been filed in the present case in support of the possession of Tota Ram over the said field. We have already referred to the proceedings taken by Tota Ram under Section 145 Cr.P.C. and the application for correction of the entries in the revenue papers with respect to the said plot. Both these proceedings ended in favour of Tota Ram. There does not appear any satisfactory reason how the entries in the revenue papers were in favour of Tota Ram if the disputed field had been cultivated by Banney Khan, Danney Khan and others, after the expiry of the lease which was some time in 1951 or 1952. It appears from the evidence on the record that the disputed field was irrigated by canal water.

The prosecution produced canal receipts in order to prove that Tota Ram had taken the canal water and had paid for it. The accused did not produce any evidence in proof of the fact that they had irrigated the disputed field. If they were in possession of it and had irrigated it they must have got canal receipts and they should have produced them in order to prove their possession. We are not inclined to accept the contention on behalf of the appellants that the possession of Tota Ram automatically came to an end with the expiry of the period of the lease.

It appears to us, and that has also been found by the lower court, that after the expiry of the lease Tota Ram continued in possession as a tenant holding over knowing full well that the Zamindari Abolition and Land Reforms Act had come into force and under it he had become adhvasi of the plot. We are inclined to agree with the view taken by the learned Sessions Judge that Tota Ram continued in possession of the said plot after the expiry of the period of the lease and he along with Janki Prasad, Sohan Lal and Bholey was cultivating it at the time of the occurrence.

11. The question which next arises for consideration is which party was the aggressor and the decision of this question will depend on the decision of the question as to who was in possession of the said plot at the time of the occurrence. We have already said above that from the evidence on the record possession of Tota Ram had been satisfactorily established. It appears that the appellants wanted to take forcible possession having failed in the legal proceedings and with that object in view they went to the said plot armed with lathis and bhujali and started bearing Janki Prasad, Sohan Lal and Bholey. Tota Ram somehow managed to escape.

It was contended on behalf of the appellants that there was some inconsistency in the prosecution evidence as to the manner of beating of Janki Prasad, Sohan Lal and Bholey. The evidence is that Janki Prasad was first beaten by Banney Khan, Danney Khan and Naushey Khan and thereafter Mohammad Husain accused asked his companions to beat Sohan Lal, Bholey and Tota Ram, Dheemars, and it was thereupon that they were beaten with lathis by the other accused. It has been stated by some of the witnesses that Mohammad Husain first asked his companions 'Beat the Dheemars as otherwise they would not listen' and it was thereupon that all the accused beat Janki Prasad, Sohan Lal and Bholey. The prosecution witnesses, however, are consistent on one point, that Janki Prasad was beaten by Danney Khan, Banney Khan and Naushey Khan and Sohan Lal and Bholey by the other accused.

We think that the inconsistency pointed out on behalf of the appellants is not material in this case when there is definite evidence that all the appellants came

together armed with lathis and three of them beat Janki Prasad and the rest Sohan Lal and Bholey. There can be no doubt that they all had the common object of taking forcible possession of the disputed field which was being cultivated at the time by Tota Ram, Janki Prasad, Sohan Lal and Bholey and it was in prosecution of this common object that they committed the murder of Janki Prasad and caused simple hurt to Sohan Lal and Bholey.

We are of opinion that they were all guilty of rioting and also under Sections 302 and 323 read with Section 149, I.P.C. We are not Inclined to accept the contention on behalf of the appellants that only those persons who actually took part in the assault on Janki Prasad could be convicted under Section 302 I.P.C. and the rest who assaulted Sohan Lal and Bholey could not be found guilty under Section 302/149 I.P.C. We have already said above that it was in prosecution of the common object of the entire assembly that the murder of Janki Prasad was committed and in this view of the matter all the members of the unlawful assembly will be responsible under Section 302/149 I.P.C. for the murder of Janki Prasad. It is immaterial that only some of the members of the assembly assaulted Janki Prasad and the rest assaulted Sohan Lal and Bholey.

12. It has also been contended before us that there was no satisfactory reason for differentiating the sentences of Danney Khan and Naushey Khan with the rest at the appellants when they have all been convicted under Section 302/149, I.P.C. We are of opinion that this contention is not correct. The learned Judge has given his reasons for differentiating between Danney Khan and Naushey Khan and the rest of the accused.

He has said in his judgment that Danney Khan and Naushey Khan who were armed with lathis inflicted the fatal injuries on the head of Janki Prasad and Banney Khan inflicted an incised wound which by itself could not have been fatal. In view of the fact that the fatal injuries on Janki Prasad were caused by Danney Khan and Naushey Khan they have been rightly sentenced to death and we do not see any satisfactory reason why these two persons should be treated with regard to the sentence in the same manner as the other accused.

13. We, therefore, dismiss this appeal, maintain the conviction and sentences of the appellants and direct that the sentence of death which has been passed against Danney Khan and Naushey Khan under Section 302/149 I.P.C. shall be carried out according to law. The reference made by the learned Sessions Judge for the confirmation of the death sentences of Danney Khan and Naushey Khan is accepted.

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