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Pyare and ors. Vs. the State

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Court : Allahabad

Decided On : Jun-09-1952

Reported in : AIR1953All327

Judge : Beg, J.

Acts : Indian Penal Code (IPC), 1860 - Sections 103, 147, 148, 304, 323 and 325; Uttar Pradesh Tenancy Act, 1939 - Sections 160(3) and 180

Appeal No. : Cri. App. No. 229 of 1951

Appellant : Pyare and ors.

Respondent : The State

Advocate for Def. : B.L. Kaul, Adv. for ;Dy. Govt. Adv.

Advocate for Pet/Ap. : H.K. Ghose, Adv.

Judgement :

Beg, J.

1. This is an appeal by Pyare, Basantoo, Nanhoo, Tika, Jabba and Kundan who have been convicted and sentenced under various sections of the Penal Code. Under Section 304, Penal Code, all of them except Nanhoo have been sentenced to four years' rigorous imprisonment and a fine of RS. 30 each, or in default one

month's farther rigorous imprisonment. Under that section Nanhoo has been sentenced to one year's rigorous imprisonment and a fine of Rs. 30 or in default one month's further rigorous imprisonment. Under Section 325 and 323, Penal Code, all the appellants were sentenced to three months' and and six months' rigorous imprisonment each respectively. Under Section 147, Penal Code, all the appellants except Kundan were sentenced to three month's rigorous imprisonment. Kundan was convicted under Section 148, Penal Code, and sentenced to six months' rigorous imprisonment. All the sentences passed on each of the accused were to run concurrently. Two other persons, Mulla and Mangoo were also charged along with the aforesaid appellants but they were acquitted.

2. The accused were charged with being members of an unlawful assembly formed with the common object of forcibly dispossessing Khuman and Udan from their sugarcane field on 19-11-1949, at about six gharis after sunrise in the 'har' of village Umaria, police station Shahabad, district Hardoi. They were further charged with having committed culpable homicide not amounting to murder by causing the death of Khuman as well as with having caused injuries on Gulzari Lal, Gajraj and Chhotey Lal.

3. The incident in question was the result of a dispute between a party of Kisans who may be called the Kisans or the appellants' party on the one hand and a party of Brahmans and Ahirs who may be described as the complainant's party. It may be mentioned that the appellants Pyare, Basantoo and Nanhoo are own brothers and are Kisans by caste. Tika, Jabba and Kundan, the other three appellants are their cousins and also Kisans by caste. The dispute between these two parties arose over the ownership and possession of a plot of land with an area of about 18 bighas 1 biswa situate in Umaria Kalan and has been going on for sometime. This plot has been the bone of contention between them in the revenue Courts. The admitted facts relating to the dispute between the parties may be mentioned at the outset. It would appear that on 10.11.1948, Pyare, appellant, and others filed an application that the entries existing in the Patwari's papers in favour of the complainant's party were erroneous and were made as a result of the collusion of the Patwari with the complainant's party. On 23-1-1949, the tahsildar made a

report against the party of the Kisans appellants. On 5-2-1949, the case relating to entries was decided against the Kisans appellants : vide EX. 32.

Subsequent to the adverse decision of this case against them, two suits were filed and the evidence relating to these two suits is, in my opinion, of crucial importance in the decision of the present case. One of these suits was filed by Pyare Kisan and others including Jabba who had lost in the case relating to entries. This suit was filed against Pyare Brahman, Eaghoo and Ram Eoop who belonged to the complainant's party. This suit was filed on 9-4-1949. It was a suit under Sections 180 and 59, U. P. Tenancy Act. The plaintiffs claimed ejectment of the defendants and compensation for the unlawful possession of the said land by the defendants. The plaint of this suit is EX. 13. The other suit was filed by Tika appellant, against the same defendants on the same date under Sections 180 and 59, U. P. Tenancy Act. On 15-10-1949, both the suits were decreed--vide EXS. 28 and 29. On 18-11-1949 actual dakhal dehani of the said plots in favour of the decree-holders, Pyare and others as well as Tika was made in the said suits--vide Exs. 26 and 27. The effect of the plaintiffs obtaining a decree in their suits under Section 180, U. P. Tenancy Act, was that the crops existing or standing on the said land at the time of delivery of possession vested in the decree-holders irrespective of the fact as to whether they were sown by the decree-holders or the judgment-debtors--vide Section 160 (3), U. P. Tenancy Act.

4. It may be taken as admitted by parties that on 19-11-1949 at about 9 P.m. when the incident is alleged to have occurred, the sugarcane crop was actually standing on the plots in dispute, Thecases set up by the complainant and the accused regarding what happened on that date are conflicting. According to the case of the complainant he and his party were in possession of the said plot and while they were cutting the crop, the appellants' party came and attacked them causing the death of Khuman and injuries to Gulzari Lal, Gajraj and Chhotey Lal. On the other hand ac-cording to the case of the appellants they were in possession of the crop and were cutting the same when the complainant's party came, attacked them and caused injuries to Nanhoo, Jabba, Pyare and Basantoo. Both the parties made first in-formation reports at the thana giving their own version of the incident. Both the reports were made on 19-11-1949 at 1.10 P.m. The report on behalf of the

appellants' party was made by Pyare Kisan and other on behalf of the complainant's party was made by Udan at the same time and on the same date.

5. The medical evidence indicates that Khuman, deceased, had seven injuries, Gulzari Lal had twelve injuries, Gajraj three and Chhotey Lall five. Altogether therefore there were twenty seven injuries on the complainant's side. On the other hand, the medical evidence also shows that on the side of the appellants, Nanhoo received twelve injuries, Jabba three, Pyare six and Basantoo five Thus there were altogether twenty-six injuries on the side of the appellants. The results of the fight, therefore, seem to have been equally balanced.

6. Seven witnesses were produced on behalf of the prosecution in support of its case. Their names are Udan P. W. 1, Gulzarii, P. W. 2, Gajraj P. W. 3, Chhotey Lal P. W. 4, Sheo Charan P. W. 5, Rameshwar P. W. 8 and Jaddu P. W. 9. They stated that the complainant's party was in possession of the crop and while they were cutting it, the Kisan or the appellants' party came and attacked them. According to the prosecution case the Brahman and Ahir party were entitled to this crop and were in possession of it.

7. The trial Court relying on EX. 31 which was the report of the tahsildar against the Kisan party prior to the suits under Sections 180 and 59, U. P. Tenancy Act, and other documentary evidence believed these witnesses and came to the conclusion that in view of the circumstances disclosed thereby the complainant's party were in possession and the appellants or the Kisan party must have been the aggressors. The trial Court also relied on the medical evidence for arriving at that conclusion.

8. As I have mentioned above, the injuries on both sides seem to have been equally balanced, and in a case of this nature it is very difficult to come to a definite conclusion as to which party was the aggressor merely from the number of injuries suffered by one party or the other.

9. The main argument advanced by the learned counsel for the appellants is that his clients were not the aggressors since they had obtained a decree in their favour, and further they had obtainedactual dakhal dehani against the

complainant's party and were in possession of the said plot. In support of this argument, the learned counsel invited my attention to the large number of injuries received by the appellants' party in this fight. In the alternative his argument was that even supposing the appellants' party was the first to attack, they would be protected by the law relating to the private defence of property. In this connection he strongly relied on Section 160, U. P. Tenancy Act. Sub-sections (1) and (2) of Sections 160 deal with the case of a person who has sown the crop and is not a trespasser. In such a case the person who has sown the crop or the tenant is entitled in law either to remove the crop or to have the value of the crop assessed and paid to him or to have it adjusted against the claim of the decree-holder. Sub-section (3) of Section 160, however, deals with the case of a trespasser under Section 180. He has no claim to the crop and even if such a crop was sown by him the benefits conferred by Sub-sections (1) and (2) on a bona fide claimant are not available to him. The law seems to have deliberately made a distinction between the case of a person with an ostensible title and a rank trespasser and granted certain concessions to the former while denying the same to the latter. Section 180, U. P. Tenancy Act, is meant for the ejectment of a trespasser. Sub-section (3) of Section 160 accordingly runs as follows :

'Nothing in this section shall apply to a person ejected from land under the provisions of Section 180 and any crops or trees existing on such land at the time of the delivery of possession shall vest in the decree-holders.'

Pyare and others as well as Tika who belonged to the Kisan party had admittedly obtained a decree against the complainant's party under Section 180, U. P. Tenancy Act. They had also obtained dakhal dehani against them. The effect of these proceedings was to vest title in the crop in the Kisan party with the result that the complainant's party had no title left in law and they could not justifiably lay any claim to it thereafter. Even if the Kisan party went to the spot to dispossess the complainant's party while the latter were cutting the crop, they would be acting in defence of the property which had vested in them as a result of aforesaid proceedings. The position, therefore, in Law would be that if the case of the accused-appellants that they were attacked by the complainant's party is accepted they would be protected both by the law relating to private defence of person as

well as of property. If on the other hand the case of the complainant that he and his party were cutting the crop when they were attacked by the appellants' party is accepted then also the appellants would be protected by the law of private defence of property. As mentioned above by me, the property had vested in the appellants' party. They had title to the property and they would have a right to stop anyone from causing damage to that property. Under Section 103, Penal Code, the right of a person exercising the right of private defence of property extends to the voluntary causing of death if the offence, the committing of which or the attempting to commit which occasions the exercise of the right, be an offence of theft or mischief under such circumstances as may reasonably cause apprehension that death or grievous hurt will be the consequence if such right of private defence is not exercised. In this fight, Nanhoo a member of the appellants' party exercising the right of private defence of, property had actually received three grievous injuries. The appellants would, therefore, be fully protected by the law of private defence of property.

10. Thus whichever view of the case is taken, i. e., whether the appellants attacked first or were the first to be attacked, they are completely shielded by the law of private defence. This appeal must, therefore, succeed.

11. I accordingly allow this appeal, set aside the conviction of Pyare, Basantoo, Nanhoo, Tika, Jabba and Kundan and acquit them. They are on bail. They need not surrender.

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