

**Shiv Charan and ors. Vs. State**

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**SooperKanoon Citation :** [sooperkanoon.com/461503](http://sooperkanoon.com/461503)

**Court :** Allahabad

**Decided On :** Dec-03-1964

**Reported in :** AIR1965All511; 1965CriLJ578

**Judge :** M.H. Beg, J.

**Acts :** [Evidence Act, 1872](#) - Sections 13, 40, 41, 42 and 43

**Appeal No. :** Criminal Appeal No. 1614 of 1963

**Appellant :** Shiv Charan and ors.

**Respondent :** State

**Advocate for Def. :** Addl. Govt. Adv.

**Advocate for Pet/Ap. :** Jagdish Narain Agarwala, Adv.

**Disposition :** Appeal partly dismissed

**Judgement :**

**M.H. Beg, J.**

1. The appellants have been con-victed under Section 147, I. P. C. and sentenced to one years' R. I. They have also been convicted under Section 325/149, I. P. C. and sentenced to two years' R. I. They have been further convicted under Section 323/149 and sentenced to one year's R. I. All the sentences were directed to run

concurrently.

2. The prosecution case was that one of the appellants Puran came along with Jassoo, Madan Lal and Kunwar Prasad prior to 10th September 1961 and asked Lila (P. W. 1) and Koka (P. W. 6) and his nephew Shanker (P. W. 5) to vacate the piece of land in dispute which had been in the possession of the family of Lila. These four persons are alleged to have demanded Rs. 500, and, in default of payment that, Lila and Koka should vacate the house in dispute. As the two brothers, Lila and Koka, refused either to vacate the house or to pay Rs. 500, the four persons went away threatening the two brothers with dire consequences. On 10th September, 1961, at about 7.30 A. M. the four appellants Shiv Charan s/o Jassoo, Daulat s/o Chhidda, Kissoo s/o Madan Lal and Hari Ram s/o Kunwar Prasad and a man called Puran, unrelated with the other accused persons, who are all first cousins, are alleged to have come to the spot and to have attacked Lila and Koka until these two persons were saved by the intervention of Shanker (P. W. 5), and witnesses Raghubar Dayal (P. W. 2) and Gajraj (P. W. 3) and Pearey (P. W. 4) also arrived at the scene. A. F. I. R. of this incident was lodged at 11.30 A.M. at Police Station Kakoor on 10.9-1961 by Lila (P. W. 1). In this report Pooran is mentioned among those who had threatened four days prior to the incident, but the name of Pooran is not mentioned among those who came with lathis to the scene of occurrence on the date of the incident.

3. A counter report was lodged at 2.30 P. M. at police station Kakoor in which the accused set out their version. The difference between the two versions is that each side claims to be in possession of the house in dispute and each side alleges that the aggression came from the other side. The two appellants, namely Pooran and Sheo Charan, alleged that they were not on the scene of occurrence at all whereas Kissoo contented himself by denying the truthfulness of the prosecution case and did not set up a plea of alibi. No evidence was given to prove the alibis set up. Two of the appellants namely Daulat and Hari Ram admitted their participation in, the occurrence in which, according to their case, they were victims of aggression. The injuries sustained by Lila (P. W. 1) and Koka (P. W. 6) were 13 in number, including a grievous injury, whereas the injuries sustained by Daulat and Hari Ram appellants were 9 in number, also including grievous injuries.

4. The crucial question in this case was whether the accused who had taken the plea of private defence of personal property, were in possession of the house in dispute or the two brothers, Lila and Koka, who asserted their own possession. The trial court noticed the statements of Lila (P. W. 1) and Koka (P. W. 6) and their nephew Shankar (P. W. 5) but preferred to rely upon the statement of Raghubar Dayal (P. W. 2), Gajraj (P. W. 3) and Pearey (P.W. 4) on the ground that they were independent persons and Raghubar Dayal (P. W. 2) was shown to be living quite near. The accused on the other hand relied upon the statements of Pitambar Singh (D. W. 1) and Chhajooram (D. W. 2) to prove their alleged possessions. After having been taken through the evidence of the eye-witnesses, all of whom resided in the same village as well as the documentary evidence, I find that there can be no doubt that the prosecution evidence relating to the possession of Lila and Koka over the house in dispute is far superior to that what was given by the appellants.

5. The learned Civil and Sessions Judge has relied upon the judgment of the Civil Judge of Bulandshahr in Civil Appeal No. 223 of 1962 arising out of the suit filed in the Court of Munsif by Lila and Koka against Jasram, the father of Shiv Charan, the appellant Daulat, Hari Ram, Kissoo, Shiv Charan and Puran as well as Madan Lal and Kunwar Prasad. A perusal of this judgment, which is on record (Ex. K 6), certainly helps in understanding the history of the property in dispute and indicates the background leading up to the incident of 10th September 1961 which is mentioned and dealt with in the judgment. In fact, the suit was instituted on 16th September 1961 as a result of the incident which had taken place on the 10th of September, 1961. The trial court as well as the appellate court found that Lila (P. W. 1) and Koka (P. W. 6) had established their possession over the house in dispute and were entitled to prevent the defendants, who included all the appellants before me, from interfering with the possession of the decree-holders.

In the course of this judgment the learned Civil Judge pointed out that Bam Kishan, a Zamindar of the property in dispute, had himself served a notice dated 27-5-1955 in which he demanded the arrears of rent at the rate of Rs. 2 p, m. and Rs. 100 as damages for having removed the beams from the house of which he claimed ownership. This notice was served upon one of the two brothers, and the

original document is on the record of the Criminal case before me now as Ex. Ka. 3. It shows that the Zamindar was himself treating the possession over the disputed house to be that of Lila and seeking to realise rent from him and also to eject him. It could be argued that such a notice could not be given by the Zamindar after the abolition of the Zamindari and the application of Section 9 of the U. P. Zamindari Abolition and Land Reforms Act, which conferred the rights of ownership upon occupants of houses in villages, and terminated the rights of Zamindars. Nevertheless, the notice is relevant as a piece of evidence as appellants claimed to have become entitled to occupy the house by virtue of payment of Rs. 500 to the Zamindar Ram Krishan by Jasram the father of Shiv Charan, Madan Lal, Kunwar Prasad, Chidda and Lila (P. W. 1).

6. It is noteworthy that Lila (P. W. 1) is alleged to be one of the contributors of Rs. 500 which was said to have been paid to the Zamindar under the bond dated 12-12-1952 (Ex. Kha 5). As the agreement to sell could not be carried out, Rs. 500 was treated as a loan. The judgment in the civil case has dealt with the documents which had also been placed on the record of this case and the court had come to the conclusion that the possession was with Koka (P. W. 6) together with his brother Lila (P. W. 1). The judgment in the civil case is certainly a strong piece of evidence indicating the possession of Lila and his brother Koka.

7. Mr. J. N. Agarwala, appearing for the appellants has argued that this judgment is inadmissible in evidence and has relied upon a Full Bench decision of Lahore High Court in B. N. Kashyap v. Emperor, 46 Cri LJ 298; (AIR 1945 Lah 23 FB), where it was laid down :

"There is no reason in my judgment as to why the decision of the Civil Court particularly in an action in personam should be allowed to have that sanctity. There appears to be no sound reason for that view. To hold that when a party has been able to satisfy a Civil Court as to the justice of his claim and has in the result succeeded in obtaining a decree which is final and binding upon the parties, it would not been open to Criminal Courts to go behind the finding of the Civil Court is to place the latter without any valid reason in a much higher position than what it actually occupies in the system of administration in this country and to make it

master not only of cases which it is called upon to adjudicate but also of cases which it is not called upon to determine and over which it has really no control. The fact is that the issues in the two cases although based on the same facts (and strictly speaking even parties in the two proceedings) are not identical and there appears to be no sufficient reason for delaying the proceedings in the Criminal Court, which, unhampered by the Civil Court) is fully competent to decide the questions that arise before it for its decision and where in the nature of things there must be a speedy disposal.'

8. Reliance was also placed upon the decision in Emperor v. Nazir Ahmad where it was laid down that the findings of a Civil Court are not binding upon a Criminal Court in a subsequent prosecution based on same facts. It was held there:

'It is the duty of a Criminal Court when a prosecution for a crime takes place before it to form its own view and not to reach its conclusion by reference to any previous decision of the Civil Court which is not binding upon it.'

9. It was argued that learned Sessions Judge had been considerably affected by the fact that the Civil Judge had found Koka(P.W 6) to be in possession and entitled for an injunction. It was pointed out that the second appeal is pending in the Court against the decision of the appellate Court in the civil case, and, upon the request of the counsel for the appellants, the record of Second Appeal No. 1988 of 1963 was sent for to ascertain this fact, It was also prayed on behalf of the appellants that the hearing of this appeal should be stayed until the decision of the Second Appeal. I am unable to accede to the prayer for adjournment on the ground that the second appeal has not yet been decided. The prayer was made orally after the bearing of the case had taken place for a considerable time. Moreover, if the first argument of the appellant's counsel is correct, the decision of the Court on the Civil side will not be admissible or relevant at all. The question, therefore, was, can the Judgment of the lower appellate court be looked into at all even though a second appeal is pending against the judgment in this court and for that reason the judgment is not final?

10. There can be no doubt that the subject matter for the decision before the Civil Court is quite different from what the criminal court has to determine. In the

present case the question to be determined was whether the appellant's side or the complainant's side was the aggressor. In deciding that question it was essential to determine the question of possession on the relevant date. That determination had to take place independently of the decision arrived at by the Civil Court. Nevertheless, the fact that one of the parties before the court had been asserting its possession litigating in the Civil Court, and had obtained a decree granting an injunction against the defendants who happened to be the accused in the criminal case can be taken into account in determining probabilities.

11. A reference to a very early Full Bench decision of this Court in *Collector of Gorakhpur v. Palak Dhari Singh* I. L. R. 12 All 1 shows that even judgments which are not inter partes, and therefore, not res judicata, have been held to be admissible in evidence under the provisions of the Indian Evidence Act. In addition to the judgments which are admissible under sections 40 to 42 of the Indian Evidence Act, section 43, Indian Evidence Act, makes the existence of the judgment relevant if covered by any other provision of the Indian Evidence Act. This means that the judgments which do not operate as res judicata can be admitted in evidence to show the existence of a judgment in favour of a party. The existence of judgment is in itself, in my opinion, of some probative value in determining the question of possession. It was also laid down in *Midnapur Zamindari Co. Ltd. v. Naresh Narayan Roy* A. I. R. 1922 P. C. 241 :--'Their Lordships do not consider that this will be found an actual plea of res judicata, for the defendants, having succeeded on the other plea, had no occasion to go further as to the finding against them: but it is the finding of a Court which was dealing with facts nearer to their ken than the facts are to the Board now, and it certainly 'creates a paramount duty on the appellants to displace the finding, a duty which they have not been able to perform.'

12. In my opinion, the provisions relied upon on behalf of the appellants only exclude judgments as pieces of conclusive evidence, but do not bar the admission of judgments as proof of the fact of litigation or its results and effects upon the parties which makes a certain course of conduct probable or improbable on the part of one of the parties. In accordance with this view. I hold that it was probable, in view of the litigation undertaken by Lila (P.W.1) and Koka (P. W. 6) and its result

that they were actually in possession. This fact can be used to corroborate the evidence given by the prosecution witnesses. In addition, there are two documents, Ex. K.3 and Kha 5, already mentioned by me from which the inference can be arrived at that the possession was with the complainant's party. It is immaterial that the same result has been reached after examining the evidence, by the Civil Court also.

13. The evidence of the prosecution witnesses has been characterised as unreliable. It has been pointed out that the part assigned to Pooran was left out from the F. I. R. and that Lila (P. W. 1) had tried to throw the blame on the police and alleged that this was done deliberately to help the appellants. The evidence of Koka (P. W. 6) and Shanker (P. W. 5) has been assailed on the ground that they are relations and that Shanker's part is not mentioned in the F. I. R. Even if the evidence of these three witnesses was not above suspicion, the evidence of Raghubar Dayal (P. W. 2) and Gajraj Singh (P. W. 3) and Pearay (P. W. 4) has been found by the trial court to be acceptable. The argument against these three witnesses is that they are also not independent. Two of them, Raghubar Dayal (P. W. 2) and Pearey (P. W. 4). are said to have gone with Lila (P. W. 1) to the police station to lodge the F. I. R. I do not think that the facts indicated that they are necessarily partisans, They may have gone there as genuine sympathisers with an aggrieved and oppressed party. As against Gajraj Singh (P. W. 3), it is alleged that he does not live in the house and is not mentioned in the F. I. R.

The evidence of the prosecution witnesses is, in any case, superior to the evidence of the defence witnesses. Pitambar Singh (LX W. 1) admitted that Lila appeared as a witness against him. Chhajjoo-ram (D. W. 2), who is said to be a better witness. has stated that Pitamber Singh (D. W. 1) and a number of persons, including Lila complainant, were occupying the house in dispute which consists of a single room. The persons alleged to be occupying the house were Lila (P. W. 1), Jasram. Madan Lal Kunwar Prasad and Chidda. out of whom Lila is the complainant. It is difficult to understand, from this evidence, how any of the appellants can be in possession except that the appellants are related as some of the various persons mentioned by the witness. It is impossible to believe that the above-mentioned five persons with members of their families could be residing in

a single room. I, therefore, hold that the evidence of the prosecution witnesses corroborated by documentary evidence on record has established beyond doubt that only Lila and Koka were in possession of the house in dispute on the date of the incident,

14. If the possession was with Koka and Lila, the aggression was bound to have taken place from the side of the appellants. It is, however, necessary to determine whether each of the appellants took part in that aggression. The fact that Pooran had not been shown to be related to the disputants, and his part in the incident is not mentioned in the F. I. R. makes it doubtful whether Pooran had participated in the incident with the appellants. If Pooran did not participate, the evidence of the prosecution witness relating to the participation of the other appellants has also to be corroborated by some piece of evidence other than statements of those very witnesses. This additional corroborative evidence is provided only in the cases of Daulat and Hari Ram who admitted their participation in the incident and alleged that they were victims. Their injuries were also proved. Their case that they were victims cannot, as I have already observed, be believed. Their presence on the scene and participation in the occurrence cannot, however, be doubted. It is possible that others also participated, but, on the evidence on record, it is not possible to determine with reasonable certainty which of the others also participated. One of several assertions of an accused person can be accepted and the remainder rejected where they are not so interlinked that all of them must necessarily be accepted or rejected as a whole.

15. As the participation of Pooran, Kissoo, and Sheo Charan has become rather doubtful, Section 147 I.P.C. will not apply to the case. Nevertheless, Section 34 I. P. C. is clearly applicable. Therefore, I set aside their conviction under section 147 I. P. C. as also under Sections 323/149 and 325/149. I, however, convict Daulat and Hari Ram under Section 323/34 I. P. C. and sentence them each to one year's R. 1. for this offence. I also convict them under Section 325/34 I. P. C. and sentence them to two years' R. 1. The sentences will run concurrently. The appellants are on bail. Sheo Charan, Kissoo, and Pooran need not surrender. Their bail bonds are cancelled. The appellants Daulat and Hari Ram will surrender forthwith to serve out their sentences.

