

Kunwar Sen Vs. Vir Sen and ors.

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Court : Allahabad

Decided On : Jul-04-1967

Reported in : 1969CriLJ76

Judge : H.C.P. Tripathi, J.

Appellant : Kunwar Sen

Respondent : Vir Sen and ors.

Judgement :

ORDER

H.C.P. Tripathi, J.

1. This revision is directed against an order of acquittal passed by a Magistrate First Class, Mainpuri, in a case under Section 325 with Section 34, Penal Code.

2. The prosecution story lies in a narrow compass. On 18.11.1968 at about 6 p.m. complainant Kunwar Sen was passing on a Rasta (pathway) which ran through the fields of the accused. When he was in the midst of the field the accused suddenly appeared armed with lathis and kulhari and questioned him as to why he was passing through their field. The complainant entreated to be excused and promised not to pass on that passage again. He also requested them to allow him to go out of the field. The accused, however, did not listen to his entreaties and attacked him with their respective weapons. On the alarm raised by the victim a

number of villagers reached the scene and witnessed the occurrence. Complainant Kunwar San had received nine injuries one of which had resulted in fracturing his ulna bone of the right fore-arm. He was immediately taken to the hospital at Sirsaganj and on the next morning he lodged a report at the police station giving the essentials of the prosecution story.

3. At the trial the prosecution version was supported by injured Kunwar San and two Other villagers Phadali and Badshah who stated to have seen the respondents striking the complainant on the Rasta.

4. Dr A.K. Gupta, (P.W. 4) Medical Officer, Sirsaganj, testified to have found nine injuries on medical examination of the person of the complainant Dr. A.S. Mathur (P.W. 5) Stated to have X' rayed one of such injuries which had resulted in fracture of the ulna bone of complainant's right fore-arm.

5. The accused respondents denied to have participated in the occurrence or to have assaulted the complainant. Their case was that they had been falsely implicated on account of enmity.

6. One Kishan Singh who was produced in defense stated that the complainant had fallen in a well and had thereby received injuries. The witness had helped in taking him out of the well.

7. The learned Magistrate without giving any finding on facts came to the conclusion that even if the prosecution story is held established 'the accused in the present case had every right to prevent the complainant from continuing the criminal trespass, regardless of the amount of damage that was likely to be caused...and the saying of the complainant that he requested the accused to be excused and promised not to pass again and again requested for allowing him to pass on that day does not give him any right for insisting that he must continue the criminal trespass. Thus if the accused used force to prevent him from continuing the trespass. they used to it in the exercise of the right of private defence of property and they are entitled to benefit of Section 104, Penal Code.' Accordingly he acquitted that respondents.

8. There can be no doubt that the trial Magistrate has taken a wholly erroneous view of the law and has misunderstood the import of the decision of the Court in the case of *Hukum Singh v. State* : AIR1959 All690 . In that case the appellants after loading their bullock carts with sugarcane took them across a large number of fields including the field of the deceased although there was no Rasta for the bullock carts through the fields in which there were standing crops and when the deceased objected they had severely assaulted him. Here the case is reverse in so far as the complainant stopped passing through the field and entreated the accused to excuse him but he was behavoured by them. Moreover there can be no comparison between an individual passing through a field covered with crops and loaded bullock carts going over the same as the quantum of damage to the crops, if any, in the former case will be negligible to merit any serious consideration in such circumstances.

9. It must be noticed that the accused had totally denied to have beaten the complainant and the evidence led on their behalf suggested that the complainant had received those injuries by a fall in a dark well. When the complainant entreated the accused to excuse him for having passed through their field and to allow him to go out of it and when there is nothing on the record to indicate that when the accused did not agree to his entreaties the complainant made any attempt to proceed further in the field the question of the accused respondents being justified 'in preventing him to continue the trespass' does not arise and they were not justified in beating him. There is neither any evidence on the record nor the circumstances of the case indicate that the complainant had caused any damage to the crops of the accused. The evidence on the record on the other hand shows that he was passing on a Rasta which ran through the accused's field. It is true that the field was covered by the crops. That does not, however, preclude the possibility of the existence of a village pathway running through the field. Had there been no Rasta there was no point in the complainant to try to walk over the crops as on the one hand it would have prevented his movement and on the other would not have resulted in any appreciable damage to the accused crops. When the complainant begged the accused to be excused for having passed over the Rasta running through their field and to allow him to go out of it the criminal trespass, if any, had ceased to exist and the accused had no

justification in severely beating him.

10. In this view of the matter the order of acquittal recorded by the learned Magistrate by giving the benefit of Section 104, Indian Penal Code, to the accused respondents does not appear to be correct and must be set aside.

11. Accordingly this revision is allowed. The order of acquittal recorded by the trial Magistrate is set aside and the case is sent back to the District Magistrate of Mainpuri for having it tried de novo by some other Magistrate competent to try it who will decide the case in accordance with law after arriving at his own findings of fact on the basis of evidence produced before him irrespective of the observation made in this judgment.

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