

Kana and ors. Vs. State

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Court : Madhya Pradesh

Decided On : Nov-12-1951

Reported in : 1953CriLJ6

Judge : Chaturvedi, J.

Appellant : Kana and ors.

Respondent : State

Judgement :

Chaturvedi, J.

1. The petitioners are fourteen in number. All are residents of Chohankhedi. They were challaned by Khudel Police under Sections 325, 147 and 149, and were convicted only under Section 147 by the Sub-Divisional Magistrate, Second Class, Paragana Indore. Petitioners Govinda, Mangya, and Budhya were fined Rs. 50/- each. The remaining applicants were sentenced to one month's rigorous imprisonment each and Rs. 50/- fine each. They appealed to the Sessions Judge who dismissed their appeal so far as their conviction was concerned but he allowed the appeal (except in the case of Kana, appellant) so far as the sentence was concerned and set aside the sentence of imprisonment but maintained the fine imposed on each applicant. Kana's appeal was dismissed and his sentence was also maintained. Kana and others have come in revision to this court; and, Mr. Bharucha contends, firstly, that the distinction in the sentence made by the Court

in Kana's case and in the case of others cannot be sustained from the legal point of view.

2. In my opinion, this contention is well founded. The prosecution story in brief is that on 18th August 1949 the applicant Kana along with others, 13 accused and 10 ploughs, went over to the field of the complainant, Saligram, assaulted him, and his servants and took possession of the field unlawfully. The main evidence against the accused is that of P.W. 1 Saligram the complainant. I have gone very carefully through his deposition but he does not say anything against Kana. (After narrating the statement of this witness the judgment proceeds :) There is not a single word indicating that Kana assaulted anybody or abused anybody or did anything even to enforce his right in the field. There is not a single witness who deposes anything against him; and under these circumstances, I agree with Mr. Bharucha that Kana cannot be singled out for imposing a punishment more severe than that imposed on others.

3. The crucial point in the case is whether there was any unlawful assembly or not. On behalf of the defence, two witnesses, Patel of the Village Chensingh D.W. 1, and Jagirdar Ramchandra Shastri, D.W. 2, have been produced and a document Ex. D/8 has been proved. From this evidence, it transpires that the field in question was formerly in possession of one Shankar Patel. After Shankar's death it was given by the Jagirdar to Saligram complainant, and after one year the Jagirdar gave it to Kana, applicant, whose son had been adopted by Shankar before his death. It is not disputed that the land belongs to Jagirdar and the Jagirdar had power to give it to anybody for a year. The main question then is whether Kana had the right or not to take his plough to the field in dispute. The Patel Chensingh deposes that as soon as he received Ext. D/8 from the Jagirdar, through Kana, then he sent for four Panchas and in the presence of the Panchas he told Shaligram that after the receipt of Ex. D/8 he should not plough the field in question. According to the Patel's deposition Shaligram had agreed not to plough the land at all. And after that, Kana and others reached the field in dispute with their ploughs. If the deposition of Patel Chensingh is true it will mean that Shaligram had acquiesced in his dispossession of the field in dispute; and, once he had acquiesced in his own dispossession, he had no right to stop the ploughs

of Kana and others who had the Jagirdar and Patel's authority with them.

4. Under the circumstances, I think Mr. Bharucha is right in his contention that Kana and his party cannot be members of an unlawful assembly and cannot be held guilty of rioting. An assembly led by Kana and others was lawful in the circumstances of the case and a lawful assembly does not become unlawful merely by reason of its lawful acts exciting others to do unlawful acts - In re Mukka Muthrian AIR 1916 Mad. 1062 (2), An assembly of persons lawfully exercising the lawful rights would not become an unlawful assembly merely by repelling an attack made on them by persons who had first acquiesced in handing over possession to them. Individuals may be liable for particular acts of hurt committed by them, but here the Magistrate himself did not find any of the petitioners guilty of causing hurt, even constructively.

5. The main difficulty with the trial court in this case has been, that the defence evidence has not been carefully considered by it. I do not understand how the statement of the Jagirdar and the Patel of the village can be brushed aside. Where the defence witnesses have not even been cross-examined and their evidence stands unrebutted, there is no reason why their evidence should not be accepted. The courts below have not held that the two witnesses produced by the defence are unreliable and it does not appear why a Jagirdar and a Patel of village will tell lies before a court. There is neither the evidence of friendship with the accused, nor of enmity towards the complainant. The only explanation for ignoring this evidence given by the trial court and the appellate court is that in his statement before the court, Kana applicant had not specifically raised his plea that he had with him the Jagirdar's authority to plough the field. But it has to be borne in mind that Kana was not debarred under any provision of law from raising this plea afterwards; and no inference as to the guilt of any accused person can be necessarily drawn from any erroneous or even a false statement made by him or by omission of a material particular made by the accused.

6. From the questions put in cross-examination to Shaligram P.W. 1; Deokaran P.W. 2; and Chhotya P.W. 3, it becomes quite clear that the plea of the accused in this case, from its very inception had been that Kana was authorised by Ext. D/8 to

plough the field; and then it becomes quite immaterial whether Kana deposed or did not depose anything about it in his statement under Section 342. In my opinion, therefore, the evidence of the two disinterested defence witnesses cannot be brushed aside in this manner. An improbability to prevail against the direct evidence of disinterested witness must be clear and cogent; and the circumstances upon which the two courts below proceeded do not, in my opinion, satisfy this test.

7. For these reasons I have no hesitation in differing from the two courts below who appear to me to have proceeded upon a wrong view of the improbabilities of the case set up by the defence. First, it is not suggested that Shaligram had occupancy rights in the field, or, that the Jagirdar was in the habit of running with the hare and hunting with the hound. If the period for which the field was given to Shaligram is not mentioned in Ext. P/8, I do not know if there is any provision in law which debars the Jagirdar from giving the field to any other tenant after one year, or from treating Ext. P/8 as creating a tenancy either from year to year or a tenancy at will.

This question has not at all been touched by the courts below. Secondly, it is suggested by the trial court that the land for which the possession was given to Kana and others has not been specifically mentioned in Ext. D/8. When the Jagirdar and the Patel of the village come and depose in the trial court that this 'Chhithi' was meant for the field in dispute the point raised by the trial court loses its importance. Where the facts are stated by the witnesses with sufficient correctness and precision the legal effects which flow from them are a matter for determination by the court which conducts the trial. The court ought not to have expected a better standard of proof than that which has been laid down in the Indian Evidence Act; for, legal proof is neither more nor less than what is indicated by the definition of the word 'proved' in Section 3 of the Evidence Act.

8. I would not repeat the views of the trial court that Shaligram, Chhotya, Ramnarayan and Rajaram and others have told a lie, before the court on the material point in the case; and it is difficult to believe them on the question how the scuffle, assault and quarrel originated in the field and which party actually was the

aggressor and how the rioting took place. It appears that Shaligram had first agreed in the presence of the Patel that Kana and others should take possession of the field, but exactly when this party came with the ploughs and took possession of the field Shaligram suddenly changed his mind and obstructed them. This was not a case of 'maintaining his right' and was not justifiable. In my opinion under these circumstances the conviction of the applicants cannot be sustained.

9. I would, therefore, allow the revision, set aside the conviction and sentence of all the applicants and acquit them. Kana applicant is on bail and he need not surrender. His bail bonds are cancelled.

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