

Om Parkash and ors. Vs. the State

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Court : Delhi

Decided On : Sep-14-1982

Reported in : 1982CriLJ751; 23(1983)DLT50

Judge : Leila Seth, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 147

Appeal No. : Criminal Appeal No. 99 of 1980

Appellant : Om Parkash and ors.

Respondent : The State

Advocate for Pet/Ap. : B.D. Sharma and; D.R. Sethi, Advs

Judgement :

Leila Seth, J.

(1) This appeal is directed against the judgment and order of the Additional Sessions Judge, Delhi in case No. 69 of 1979 dated 29th January, 1980 convicting the five appellants under Sections 147, 148, 323/149 and 324/149 Indian Penal Code. On 30th January, 1980, each of the appellants was directed to pay Rs. 100.00 under Section 5B of the Probation of Offenders Act as costs of the proceedings ; and be released on probation on furnishing personal and surety bonds of Rs. 2,000.00 to ensure for a period of two years, to keep the peace.

- (2) This case arises out of a family dispute with regard to irrigation of fields in village Bajitpur.
- (3) The five appellants are Sardar Singh alias Sardare and his four sons, Om Prakash, Saheb Singh, Raj Kumar and Mange. The complainant is one Krishan Kumar. He is the son of Banwari. Sardare and Banwari are brothers and the sons of Paitu. The others who figure in this case and a. connected case are Ishwar and Daya Nand who are also the sons of Banwari; Naresh Kumar who is the son of Ram Ghander; Ram Ghander and Ram Kishan who are the cousins of Sardare and Banwari.
- (4) Sardare, Banwari, Ram Chander and Ram Kishan are joint owners of agricultural land comprised in the case 'khewat' in village Bajitpur. However, there are a number of fields in the 'khewat' and these are being cultivated separately by the co-sharers. The land is irrigated by canal water. But as the fields of the various co-owners are interspersed, the water channels for irrigation purposes arise-arose through the fields of other co-sharers. However, some sort of time and turn system had been evolved.
- (5) Controversies and disputes with regard to these water channels and irrigation rights were pending. Partition proceedings were also pending before the Revenue Authorities. On 23rd November, 1977 Sardare lodged a report in police station Narela, Ext. Public Witness . 3/A, complaining that his water channel had been obliterated by Ram Chander, Ram Kishan and Naresh Kumar's group. He feared that this would lead to destruction of his crops and result in bodily harm to him and his family.
- (6) The occurrence with which we are concerned in this case is of 7th December, 1977. According to the prosecution, on that date, Sardare and his sons were entitled to irrigate their fields from about 1.15 at night. But Ram Ghander and Banwari started irrigating their fields on the turn and time of one Kama son of Rajpal. This was from about 10.30 p.m. after getting his consent. Krishan Kumar, Ishwar and Daya Nand sons of Banwari and Ram Ghander's son Ramesh, went to their fields and dug a channel in Sardare's field in order to lead the water to their fields. Later, Sardare and his four sons arrived armed with lathies, Jaillies etc. and

attacked them. Banwari who was in a hut nearby was also injured. Ishwar then attacked Sardare and there was a free fight.

(7) A first information report was lodged by Krishan Kumar at police station Narela at 18.55 a.m. on 8th December, 1977. However, it appears that Sardare had already lodged a first information report with regard to the same incident at 2.50 a.m. at police station Narela. The first information report of Sardare is F.I.R. No. 271 of 1977 whereas the first information report lodged by Krishan Kumar is F.I.R. No. 272 of 1977. In this case I am concerned with the later first Information Report.

(8) The injured in the Sardare group as also the injured in the Krishan Kumar group were medically examined. After investigation both the groups were charge sheeted and tried by the Additional Sessions Judge, Mr. R.P. Gupta. He found both groups guilty and released them on furnishing personal and surety bonds for keeping the poses as above noticed. In the present case, he released them in view of the fact that the accused were first offenders, the parties closely related, the dispute of a civil nature and the accused, apart from Sardare, very young who had also received grievous injuries at the hands of their cousins.

(9) In the cross-case in which Sardare has lodged the first information report with regard to the same incident, the same Additional Sessions Judge had passed a similar sentence on Krishan Kumar and Ishwar sons of Banwari and Naresh son of Ram Ghander. In that case the conviction was under Sections 323 and 324 read with Section 54, Indian Penal Code for causing injuries to Sardare, Mange, Saheb Singh and Om Prakagh.

(10) Mr. B.D. Sharma, appearing for the appellants has submitted that this is a clear case where Banwari and his family were the aggressors and the appellants only defended themselves.

(11) Though there seems to be some force in this contention, it is not possible to as held in view of the decision of this Court in the cross case. however it does seem as from the fact that Sardare lodged a first information report at 2.50 a.m. on 8th December, 1977 being first information report No. 271 of 1977. This report is about eight hours prior to the report lodged by Krishan Kumar, Banwari's son.

Further, D.W. 1, Ram Ghander son of Har Pal has stated clearly that the water channel leading to the individual fields had been dismantled while the wheat seedlings in Banwari's field were in existence. Then there was a dispute with regard to the obliteration of the water channels is also clear from Ex. D.W. 3/A dated 23rd November, 1977. This is a report lodged by Sardare at police station Narela on that date in this connection. Further, all the three witnesses, P.Ws. 1, 6 and 7 Krishan Kumar, Ishwar Singh and Naresh Kumar, who were injured, have admitted having attacked Sardare and his sons. Public Witness . 1, Krishan Kumar states:

'AFTER I had received the head injuries, I snatched the lathi from my brother Daya Nand and gave a blow with it on the head of Om Prakash. I did not inflict any other injury on any other accused. My brothers had given other blows on the accused persons with lathies. All my brothers were armed with lathies. Again said one of my brother was having a jailli but I do not recollect the name of that brother.'

P.W. 6, Ishwar Singh states :

'KRISHANKumar received large injuries while I and Daya Nand received minor injuries. With a view to save Krishan Kumar, I, Daya Nand and Naresh attacked the accused persons.'

He has also stated at a later stage in Hindi :

'MAINE Daya Nand or Naresh ne teeno ko daba kar lathi mari. Om Prakash tub hurnse alag tha.'

(12) Public Witness . 7, Naresh Kumar has also stated that he, Daya Nand and Ishwar attacked Om Prakash and group with lathies with a view to save Krishan Kumar. 'Wehitlathies'. He admits that they were all carrying lathies and Ishwar had a kanai.

(13) The investigating officer has stated that he first came to the spot in connection with the case lodged by Sardare. That was at about 9.50 a.m. He has also stated that Sardare's party had the larger number of injuries. It was only when he returned to the police station that he came to know about the present first

information report lodged at 10.50. a.m. This necessitated his returning to the spot and starting investigations with regard to the present case.

(14) The case pertaining to F.I.R.. No. 271 of 1977 was as above noticed also heard and disposed of by Mr. R P. Gupta, Additional Sessions Judge. In that case Krishan Kumar and Ishwar sons of Banwari and Naresh Kumar son of Ram Ghander were 'convicted under Section 323 and 324 read with Section 34, Indian Penal Code on 29th January, 1980.

(15) An appeal was filed from that judgment and order which is Criminal Appeal No. 131 of 1980. The said appeal was heard and disposed of by Hon'ble Mr. Justice J.D.Jain on 22nd January, 1982. The learned Judge allowed the appeal and set aside the conviction. He felt that he could not held that the appellants in that case were the aggressors but was in agreeement with the conclusion of the Additional Sessions Judge that it was a case of a free fight in which both the parties were pitched against each other to settle their old socoies and demonstrate their process.

(16) Mr. D.R. Sethi, learned counsel for the State submits that in view of that judgment a necessary inference is that Sardare and his sons were the aggressors. I do not agree. This cannot be a necessary inference, as what the learned Judge has held is, that it is unsafe to hold that Krishan Kumar and party were the aggressors and that it was a free fight. This would not mean that Sardare and party became the aggressors.

(17) It is the admitted case of parties that the 'Khewat' in question was joint as between Ram Ghander, Ram Kishan, Banwari and Sardare. No legal and final partition had taken place. As a result of mutual agreement and mutual convenience the various co-sharers were in curtivatory possession of various fields. They were jointly irrigating their lands from the canal water. But by mutual consent they had sub-divided the time and allotted different timings for this purpose. Irrigation through the channels drawn through the fields of their co-sharers seems to be within their rights. As such, Sardare was entitled to irrigate his fields and make a water course for this purpose through the fields of Ram Ghander and Banwari. The demolishing of this water course by Ram Kishan, Ram

Ghander and Naresh, as referred to in Ex. D.W.3/A on 23rd November, 1977 certainty lead to tension. But this cannot warrant the inference that the appellants were aggressors. In fact Mr. Justice J.D. Jain in his judgment dated 22nd January, 1982 above mentioned specifically observed as follows :

'LOOKED at the whole matter from this angle too, the Complainant party has to blame itself for picking up the quarrel. However, it would not warrant the inference that they were first to assault and were aggressors as such.'

(18) It would, therefore, appear that neither party can be held to be aggressors. But an altercation did take place with regard to irrigating the fields and injuries were caused as both sides as a result of this tension. However, there does not appear to be any common intention or any common object to assault or injure the other group. The appellants are, therefore, not members of an unlawful assembly. Nor does it appear to be a case of rioting, but something which happened suddenly at the spur of the moment.

(19) It would, therefore, appear to me that the appellants cannot be convicted of the offences under Sections 323 and 324 read with Section 149, Indian Penal Code.

(20) In the result, the appeal is allowed and the convictions are set aside.