

The State Vs. Adra and ors.

The State Vs. Adra and ors.

SooperKanoon Citation : sooperkanoon.com/751268

Court : Rajasthan

Decided On : Sep-06-1957

Reported in : AIR1958Raj52; 1958CriLJ222

Judge : Wanchoo, C.J. and; Dave, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 97, 300 and 441

Appeal No. : Criminal Appeal No. 134 of 1955

Appellant : The State

Respondent : Adra and ors.

Advocate for Def. : Thanchand, Adv. for Respondents (Nos. 1, 2, 4, 6, 8, 16, 20 and 21)

Advocate for Pet/Ap. : L.N. Chhangani, Govt. Adv.

Disposition : Appeal dismissed

Judgement :

Wanchoo, C.J.

1. This is an appeal by the State against the acquittal of Adra and 21 others by the Additional Sessions Judge of Sirohi for offences under Sections 148, 302, 324 and 323 read with Sections 149 of the Indian Penal Code.

2. The case relates to an incident which took place on the morning of 6th of September 1954 at village Manora. It arose out of a dispute about a field called Keringwala Jao. The area of this Jao is over 40 bighas. There is no fencing round the land and there is no building -- Kutcha or Pucca -- on it; nor is there a well on this land.

3. The prosecution case is that this land was cultivated by Adra and other accused up to the 22nd of July 1954. On the 22nd of July, Chatra went to the field and objected to its cultivation by the accused. On that day six of the accused had gone to plough that field, namely Ransa, Lakha, Bhoma, Poonma, Veera and Bhika. Four other accused, namely Jama, Vadia, Jesa and Thana were also present at the field.

Chatra and his three sons, Taga, Poonma and Loomba went to the field and objected to the accused ploughing it. The claim, which they put forward, was that Chatra's father had mortgaged this field in Samwat 1956 to the accused for 40 years and as the period of mortgage had expired, Chatra wanted to get back the field and, therefore, went with his sons to stop the accused from ploughing. The accused, who were present on the field, did not throw out Chatra and his sons and decided to leave the field. The prosecution case further is that on the very next day Jesa filed an application before the Sub-Divisional Officer, Sirohi, under the Rajasthan (Protection of Tenants) Ordinance 1949 (No. IX of 1949).

In that application, he said that he had been ejected from the field and should be put back in possession. Notice of that application was given to Chatra and others and they appeared before the Sub-divisional Officer. Then on the 5th of August 1954, Jesa withdrew this application with permission to file a fresh application on the ground that other persons, who had interest in the field, had not joined with him in the application of 23rd of July 1954 and, therefore, it might be dismissed on account of that legal defect. Permission to withdraw the application was given with the right to file a fresh application and Rs. 5/- were allowed as costs to Chatra and others. Nothing happened thereafter till the 6th of September.

The prosecution case further is that on 6th of September, the accused went to the field again to plough it. Some witnesses say that six accused went in advance with

ploughs, while others followed shortly after with arms; while others say that all the 22 went together with ploughs and arms. They were seen by Sawa going that way and they told Sawa that they were going to plough that field. Sawa then went to Chatra and told him about it. Thereupon, Chatra and Sawa went to the field to stop the accused from ploughing it. On reaching the field, Chatra sat in front of the ploughs and would not allow the land to be ploughed.

Thereupon, some of the accused caught hold of him and began to beat him. He fell down injured and became unconscious. The prosecution evidence further is that Sawa was also beaten and that Taga, Poonma, Rawta and Lumba P. Ws. came one by one to intervene and were beaten down. Of these, the injuries received by Rawta proved to be fatal. The matter was reported in the Thana through Kapura, who was also an eye-witness of the incident.

Kapura had left the spot before the fight was over and, therefore, there is no mention in the report of Rawta's death. Thakur Motisingh, Jagirdar, who had sent Kapura to make the report, however, himself arrived at the Thana shortly afterwards and reported that Rawta had died. Consequently, a case under section 302 and various other sections of the Indian Penal Code was registered and the Sub-Inspector came to the spot to investigate the matter.

4. The accused in their statements admit that an incident had taken place on the 6th of September 1954. They have given a version of their own and we should like to give that version too. The case of the accused is that they had been in possession of this Jao in their own right for generations. They say that the story put forward, by Chatra that his father had given this land on mortgage to the ancestors of the accused was palpably false. The accused were peacefully in possession of this land for generations; but on the 22nd of July 1954, Chatra, probably at the instance of the Jagirdar, suddenly decided to create trouble.

Consequently, he came to the field on the 22nd of July, 1954 and interfered when some of the accused were ploughing it. The accused did not want to create trouble and, therefore, withdrew. But they contend that that did not mean that they had given up possession or that Chatra came in possession of the field on the 22nd of July 1954 and remained in possession till the 6th of September 1954. The making

and withdrawing of the application under the Rajasthan (Protection of Tenants) Ordinance was admitted, but it was said that it was under a misapprehension of law that Jesa accused said in that application that the accused had been dispossessed.

As a matter of fact, no application under the Rajasthan (Protection of Tenants) Ordinance was made at all because, in the first place, the accused were never the tenants of Chatra and in the second place, they had never been dispossessed. The story of the accused further is that they remained in possession up to the 6th of September, 1954 and that on that day only six of them, namely Vada, Jama, Bhika, Thana, Jesa and Lakha went to the field with ploughs to plough it. They had ploughed a bigha or so, when Chatra, accompanied by Sawa, Taga, Poonma, Loomba, Rawta, Kapura and the Jagirdar, Motisingh, came armed to the spot.

They wanted to drive away the accused forcibly and stood before the ploughs. Consequently, there was a fight between the two parties, as the accused naturally tried to maintain their possession over the field which was theirs for generations. One more accused Coma is said to have arrived when this fight was going on and got injuries. In this fight, six of the accused persons were injured, while six on the side of Chatra were also injured. The accused say that they had a right of private defence of person and property and they did not exceed their right when they beat off the attempt of Chatra and his supporters to dispossess them from the field.

5. After this statement of the accused, it may be taken as established that there was a fight on the 6th of September, at this place between the accused or some of them and Chatra and his supporters. The main points that have to be determined in the appeal, therefore, are (1) whether all the accused were present when this fight took place, (2) whether Chatra and those on his side, who were injured, came one by one or came in a body and (3) whether the accused had a right of private defence of person and property and did not exceed it.

6. Both parties produced evidence in support of their respective stories. The prosecution witnesses were Chatra, his nephew Sawa and his sons Taga, Poonma and Loomba, who were all injured and a few others who witnessed the fight. The defence also produced a number of witnesses in support of their story.

The evidence of these witnesses has been examined at length and with care by the learned Additional Sessions Judge and we do not, therefore, propose to go in detail into the evidence of each witness on either side.

Suffice it to say that even the prosecution witnesses admit that the accused had been in peaceful and undisturbed possession of this land for more than half a century. The story put forward by Chatra that his father had mortgaged this land for 40 years to the ancestors of the accused in Samwat 1956 has not been proved by an iota of evidence in support of it, except of course the bare word of mouth of Chatra and his supporters. The revenue records all show that the accused were in possession of this land in their own right for a long long time and Chatra had not even a semblance or a right to interfere with the possession of the accused.

Chatra's story that the land was mortgaged in Samwat 1956 for forty years is clearly belied by the fact that if it was so, Chatra should have intervened in Samwat 1996 i.e. fifteen years before he actually did so in July, 1951. There is, therefore, a good deal of force in the view taken by the trial court that Chatra was encouraged to make this unfounded claim, perhaps by the Jagirdar of the village. But there is no doubt that the claim of Chatra was completely unfounded when he first made it on the 22nd of July 1954.

7. The question, therefore, which arises at once is whether the accused can be said to have been dispossessed by the events which took place on the 22nd of July, 1954. All that happened on that day was that Chatra lay down before the ploughs and the accused, who are apparently not turbulent, decided not to fight, though they could have easily maintained their possession on that day and thrown Chatra and his sons out of the field with the use of force, provided they did not exceed the right of private defence of property.

The accused, however, did not take that step. Chatra claims that he came to be in possession from that day and was in possession up to the 6th of September 1954. As has been pointed out by the learned trial court, this claim was not put forward in so many words in the statements of Chatra and his sons before the police; but it was advanced perhaps on the basis of the foolish application under the Rajasthan, (Protection of Tenants) Ordinance made by Jesa on the next day. That application,

however, was accompanied with an affidavit Ex. D. 26 in which the facts were given and the facts were only these; namely that Jesa and others had been in possession of the land from long before and Chatra and others had interfered on the 22nd of July and had lain down in front of the ploughs and stopped him from ploughing the land,

We agree with the court below that an application under the Rajasthan (Protection of Tenants) Ordinance was completely misconceived and should never have been made. If the accused wanted the help of the court, the proper course for them was to apply under Section 145 of the Code of Criminal Procedure. In any case, the statement in the application under the Rajasthan (Protection of Tenants) Ordinance Ex. P. 16 that the accused had been dispossessed was merely an inference from what had happened on the 22nd of July. The facts, however, as to possession after the 22nd of July do not bear out that Chatra and others got possession of the field to the exclusion of the accused.

Chatra and others did nothing to the field after the 22nd of July. They did not fence it or plough it. All that is said on behalf of them is that sometimes their cattle used to graze in it; but it is well-known that cattle of all villagers graze all over the village, provided the land is lying vacant. It is true that the accused also did nothing after the 22nd of July to the field till they went to plough it on the 6th of September. The main question, however, is whether this sporadic act of Chatra in stopping the accused from ploughing on the 22nd of July put an end to the possession of the accused and put Chatra in possession of the field.

The answer to this question must, in our opinion, be that the possession of the accused really did not come to an end merely because of this one act of a trespasser like Chatra. We have already shown that Chatra and his sons had not even a semblance of right over this field. What they did on the 22nd of July 1954 was a pure act of trespass and all that happened was that on account of their trespass, the rightful owners, namely the accused came away because they did not want to have a fight on that day.

But after that, Chatra and his sons never did anything which would show that they had taken possession of the field to the exclusion of the accused. The land,

therefore, which is an open field and on which anybody can go, must be deemed to have remained in possession of the rightful owners, viz. the accused. At any rate, there was nothing after the 22nd of July which would indicate to the accused that the trespassers, who had come on their land on the 22nd of July, were still persisting in the trespass and [hat the possession of the accused had come to an end.

This might have been shown unequivocally if Chatra had, for example, planted any crop on the field or if he 'had fenced the field. But, nothing was done, which would destroy the possession of the rightful owners and put the trespassers in firm possession of this open piece of land. Rightful owners do not lose their possession, particularly on an open piece of land merely because of a single act of trespass of this nature. In *Sitaram Khapre v. Tilokchand*, 141 Ind Cas 273 : (AIR 1933 Nag 36) (A) the Nagpur Judicial Commissioner's Court observed as follows in almost similar circumstances :--

'Possession is not lost because trespassers go without license, and plough the land'.

8. Again, in *Emperor v. Amru*, 162 Ind Cas 813 (Nag) (B) the same Court held that possession is not lost because trespassers come and plough the land, as that would put the rightful owner of the land in an almost impossible position if a single act of trespass is deemed sufficient to take away his possession.

9. We agree with the view taken in these two cases and are of opinion that a single act of trespass like the one in this case cannot deprive the rightful owners of their possession, particularly on open and. It must, therefore, be held that the accused were in possession even after the 22nd of July 1954 and that when they went to plough the land on the 6th of September 1954, they were doing so in exercise of their undoubted right to this land and also because of their possession over it.

10. Let us now turn to see what happened on the 6th of September 1954. The facts may be taken from what has been stated by Sawa P. W, 1. He said that he saw five accused going towards the field with ploughs. Out of them, Vada accused

told him that they were going to plough Keringwala Jao. It was after this that he went to inform his uncle Chatra that the accused had gone to the field for ploughing it. It is not in dispute that when the accused reached the field, there was no one of the party of Chatra there.

They, therefore, in exercise of their right to the field, started ploughing it. It was after they had ploughed the field for a short time Chatra and Sawa turned up. An attempt has been made by some other prosecution witnesses e.g. Tagu that the accused, when they were going to plough the land on the 6th of September, threw out a challenge to Taga and told him that they were going to take possession of the Jao and that if Taga and his supporters wanted to do anything, they might come to the Jao.

We are, however, not prepared to believe that the accused threw out any such challenge. We are sure that if the accused had thrown out any such challenge, Taga would have immediately taken steps to inform his father and go with him to the field. But Taga's story is that he did not attach any importance to what the accused said and went about his work and it was only when his wife told him that his father had gone with Sawa to the field that he went there. The accused and Chatra live in the same vicinity and it may be that the accused informed Sawa that they were going to plough the field when Sawa met them at a short distance from the village.

But we are not prepared to believe that the accused threw out a challenge to Sawa or anybody else to come and have a fight with them over the possession of the field. Considering their conduct on the earlier occasion, namely 22nd July, 1954, the accused do not appear to be turbulent people who would unnecessarily throw a challenge of this kind. What appears to us, therefore, is that as the Rabi season was coming near, the accused decided on the 6th of September, to plough this field to which they had undoubted right and of which they had never lost possession.

As soon as Chatra came to know about it from his nephew, he again went to the spot to intervene. We are not prepared to believe the prosecution evidence that Chatra's sons and Rawta came one by one. We are satisfied that Chatra went to

the spot accompanied by his three sons and his nephew Sawa and Rawta who was apparently Chatra's supporter. They went there armed, for, both parties have received injuries. Their intention was to stop the accused, who were the rightful owners of the field and whose possession, as we have already said, had never been really disturbed, from ploughing the field and maintaining their possession of it.

Chatra had succeeded once as the accused had withdrawn on the 22nd of July and he probably hoped that he would be able to repeat the same thing again. This time, however, the accused were not prepared to withdraw, with the result that there was a fight in which both parties received injuries. The party of Chatra received 66 injuries in all, while the party of the accused received 9 injuries. There is no doubt that when the fight began, Chatra and his supporters had the worst of it and one of them, Rawta unfortunately received two injuries on the chest which resulted in the fracture of the ribs and consequently rupture of liver and ribs.

It was in consequence of this rupture of lung and liver that Rawta died. But the injuries received by Chatra and those on his side were practically all caused by blunt weapons and practically all of them were simple. But for this unfortunate accident that Rawta's ribs were fractured, even Rawta would not have died. In these circumstances, can it be said that the accused were not maintaining their right, but were trying to enforce their right by force?

In view of what we have said above, we are of opinion that the accused must be held to be maintaining their right to this field and not enforcing it by show of force. We may in this connection refer to *Pachkauri v. Queen-Empress*, ILR 24 Cal 686 (C) here the accused, receiving information that the complainant's party were about to take forcible possession of a plot of land, which was found by the Court to be in the possession of the accused, collected a large number of men, some of whom were armed, and went through the village and began to plough it.

While they were doing so, the complainant's party came armed and interfered with the ploughing. A fight ensued in which one of the complainant's party was killed and two of the accused's party were hurt. It was held that as the accused were in rightful possession of the land and found it necessary to protect themselves from

aggression on the part of another body of men, they were justified in taking such precautions as they thought were required and using such force or violence as was necessary to prevent aggression and that, under such circumstances, they could not rightly be held to be members of an unlawful assembly.

11. In this case also, the accused had undoubted right to the land. They had not lost possession over it by that single act of trespass on the part of Chatra. If, therefore, they went to plough their land on the 6th of September, they were only doing what they were entitled to do and if Chatra and others came and interfered, they were entitled to maintain their possession.

12. It has been urged by the learned Government Advocate that this is a case where both parties were prepared to fight and, therefore, no right of private defence could arise to [either of them. We know that where both parties want to enforce their right to a piece of land and in enforcement of their so called right, they go armed to plough it, determined to fight for its possession, neither party can claim the right of private defence. But this is not a case, in our opinion, of this kind.

In the first place, Chatra had not a semblance of right to the field and there was no question thus of Chatra going to enforce any right. If Chatra went to that field accompanied by others, he must have gone not to enforce any right of his, but to interfere with the accused who had undoubted right to the field and whose possession on the field must be held to be continuing. The accused, on the other hand, were not enforcing any right of theirs.

Their right was unassailable and their possession was also undoubted. The land in question was an open piece of land and there was no one on the land when the accused, in the 'exercise of their unassailable right to it, went to plough it. It was only after they had begun ploughing that Chatra came to interfere. In these circumstances, when they beat off Chatra and his men, they were only maintaining their right and were not enforcing any right.

The very fact that on one occasion namely the 22nd of July 1954 they had come away would not deprive them of the possession of the field and would not take away from them the right to maintain their possession when similar trespass was

committed on another occasion.

13. We agree with the court below that all the accused were not present when this incident took place. Seven of them were certainly present, namely Tesa, Thana, Bhika, Jama, Vada, Goma and Lekha. Chatra, accompanied by at least five others, namely Rawta, Poonma, Taga, Loomba and Sawa came to the field and interfered with the ploughing by the accused. The accused were rightful owners of the field and their possession cannot be said to have been disturbed by that single incident of the 22nd of July 1954.

In these circumstances, they had full right to maintain their possession against Chatra and others who had come there armed. They had also the right of private defence of person because they must have apprehended that Chatra and his supporters who had come armed, would attack them with lathis and would at least cause them grievous hurts. In these circumstances, if they hit back with lathis, with the result that one of the assailants died, it cannot be said that they had exceeded the right of private defence of person.

14. It was said that the accused could have taken recourse to authorities. It was particularly pointed out that they had on one occasion gone to the authorities inasmuch as Jesa had made an application under the Rajasthan (Protection of Tenants) Ordinance. It is true that it was possible for the accused when the first incident took place on the 22-7-1954 to make an application under Section 145 of the Cr. P. C. But when nothing further happened after the 22nd of July and the accused were able to go on the land on the 6th of September peaceably and to plough it, the law did not require that they should, after Chatra and others had arrived armed, run away from the field to get help from the Thana six miles away. In the circumstances, in which Chatra and others made the attack, the accused were, in our opinion, justified in using force to maintain their possession.

15. On a careful consideration, therefore, of the evidence and the circumstances, we agree with the conclusions of the court below. We have not thought it necessary to deal in detail with the evidence of the witnesses because the court below has dealt with the evidence fully and we generally agree with the criticism of the court below, so far as the prosecution evidence is concerned. There is no force in this

appeal and it is hereby dismissed.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com