

State of Rajasthan Vs. Jangsingh and ors.

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Court : Rajasthan

Decided On : Oct-28-1968

Reported in : 1968WLN263

Judge : V.P. Tyagi and; C.M. Lodha, JJ.

Appeal No. : D.B. Criminal Appeal No. 524 of 1965

Appellant : State of Rajasthan

Respondent : Jangsingh and ors.

Disposition : Appeal allowed

Judgement :

C.M. Lodha, J.

1. By his Judgment dated 30th April, 1965, the learned Additional Sessions Judge, Ganganagar acquitted the respondent Jang Singh for offences under Sections 447, 304, 324, & 325 I.P.C., and the respondent Gurdev Singh and Ram Singh (who has died during the pendency of this appeal) for offences under Section 447, 304/34, 325 & 324 I.P.C.

2. Aggrieved of this judgment of acquittal, the State has filed the above appeal. Since Ram Singh has died after the institution of this appeal, we have now to deal with the case against Jang Singh and Gurdev Singh only.

3. Succinctly stated, the prosecution case is that Ram Singh accused was allotted 7 bighas of land for temporary cultivation in Chak No. 20 STG. The accused respondents Jang Singh and Gurdev Singh and Sons of Ram Singh. It is alleged that the allotment in favour of Ram Singh accused was cancelled after some time and the land was allotted to Prem Singh and Dhir Singh, sons of Bag Singh. The possession of the land in question, it is alleged by the prosecution, was handed over to Prem Singh and Dhir Singh through their agent Ram Singh (P.W. 5) on 17-4-1964, and an entry in the roznamcha (Ex. P/14) was made by Motiram Patwari P.W. 1 to evidence the transfer of possession On 27-4-1964, at about 7.00 A. M. the three accused namely the deceased Ram Singh and his two sons Jang Singh and Gurdev Singh Respondents Nos. 1 & 2 went to the 1 and with a plough and started ploughing it. The prosecution case is that only a few days before Prem Singh and Dhir Singh had ploughed the land, but even then the accused re-ploughed it to assert their possession. Having come to know of this, the complainant's party went to the field & asked the three accused to desist from cultivating the land. The complainant's party consisted of Thakar Ram, Ram Singh and the deceased Narsa Ram At that time, it is alleged, that the accused Ram Singh asked both of his sons Jang Singh & Gurdev Singh to beat the complainant's party & Jang Singh who was armed with & jahi, gave blows with it to Thakar Ram on various parts of his body. The accused Gurdev Singh, who was armed with a farsi. also struck a blow with the farsi, to Thakar Ram. Thereafter. Ram Singh P W 5 was also beaten by both the accused-respondents. Jang Singh then gave a blow with the Jahi on the head of Narsaram deceased. Narsaram fell down on the ground and thereafter Jang Singh dealt further blows to him on his back and thigh. On hearing the cries of the complainant's party Rajaram P.W. 6 came to the spot, and seeing him, the accused ran away.

4. A first information report of the occurrence was lodged by P.W. 5 Ram Singh at Police Station, Hanumangarh the same day, at about 10.30 A.M. All the injured were medically examined the same day at Government Hospital, Hanumangarh Town by Dr. Om Prakash Mehta. The following injuries were found on the person of Thakar Ram:

1. Incised in wound ante-posterior $1\frac{3}{4}' \times 1\frac{1}{4}' \times 1\frac{1}{4}'$, right parietal region of scalp 4' above the right ear:

2. Dacerated wound $1' \times 1\frac{1}{3}' \times 1\frac{1}{4}'$ one inch and a half behind and below injury No. 1 on right parietal region of scalp.

3. Contusion reddish $4' \times 3\frac{3}{4}'$ right middle thoracic region of back. Part is painful.

(N. B. X-ray for any evidence of fracture of any rib.)

4. Contusion $5' \times 3\frac{3}{4}'$ right lower thoracic region of back. Part is painful.

(N. B. Advised X-ray examination for evidence of fracture of any rib)

5. Contusion $4' \times 1\frac{1}{2}'$ lumber region of back;

6. Contusion $3' \times 1\frac{1}{4}'$ right buttock.

7. Abrasion $2\frac{1}{2}' \times 1\frac{1}{3}'$ inner border of left fore-arm middle.

8. Swelling $2\frac{1}{2}' \times 1\frac{1}{4}'$ back of palm left hand inner. Lower portion with abrasion $1\frac{1}{2}' \times 1\frac{1}{3}'$ knuckle of left ring finger.

(N B. Advised X--ray for evidence of fracture of any bone.)

Ramingh received the following injuries.-

(1) Contused wound $1\frac{1}{2}' \times 1\frac{1}{3}' \times 1\frac{1}{4}''$;

(2) Contused wound $1\frac{1}{2}' \times 1\frac{1}{4}' \times 1\frac{1}{4}'$ half an inch behind Injury No. 1;

(3) Contused wound $1' \times 1\frac{1}{4}' \times 1\frac{1}{4}'$ behind and bllow Injury No. 2;

(4) Swelling $2' \times 1'$ back of left shoulder;

(5) Abrasion $1\frac{1}{2}' \times 1\frac{1}{4}'$ right mostoid region;

(6) Contusion reddish $2\frac{1}{2}' \times 1'$ right upper thoracic region of back outer portion

(7) Contusion reddish $1\frac{1}{2}' \times 3\frac{3}{4}'$ right buttocks;

(8) Incised wound 1/2' x 1/8' x 1/5' direction downwards & medial wards from above on back of left thumb upper portion;

(9) Punctured wound 1/3' x 1/8' x 1/2' margins contused palm of left hand inner middle portion;

(10) Swelling of the whole of dorsum of palm of left hand,

The deceased Narsaram had the following injuries:

1. Contusion 1 1/2' x 1' with swelling right parietal region of scalp upper portion,

(Advised X-ray examination for any fracture of bone)

2. Contusion reddish 5' x 1 1/4' right lower thoracic region of back. Partis painful,

(Advised X-ray examination for any fracture of any rib)

3. Swelling 2' x 2' antero-lateral aspect, simple, of left thigh lower portion

4. Tenderness 1 1/2' x 1' right calf,

The condition of Narsaram was serious He was next day, sent to Ganganagar for X-ray examination of his injuries. On X-ray examination, it was found that there was a fracture involving the right temporal bone & right parietal beneath haematoma 2'x2'. Similarly, Ramsingh also had a fracture of upper and of metacarpal bone of the left middle figure. The condition of all the three injured improved and they were discharged from the hospital after about six days. However, after sometime, the condition a Narsaram deteriorated and he was again admitted in the hospital on 9-5-64. On 15-5-64, at about 9.00 P M. he expired.

5. After making the necessary investigation, the Police challaned all the three accused in the court of the Magistrate First Class, Hanumangarh, who, after holding an enquiry committed all the three accused to the court of the Sessions Judge, Ganganagar for trial. The Sessions Judge, Ganganagar transferred the case to the court of the Additional Sessions Judge, Ganganagar.

6. The prosecution examined nine witnesses in all. All the accused denied having committed any offence. The accused Gurdevsingh and Ramsingh pleaded alibi whereas Jangsingh stated in his statement under Section 342 Cr. P.C. that the accused had been in possession of the land in question since 8 years and that on the day of occurrence he was ploughing the field when Thakur Ram, Ram Singh and one more person came there and obstructed him in the ploughing operations and also assaulted him with lathis and thereupon he lifted a 'jahi' lying nearby and beat them. The accused, however, did not examine any evidence in defence.

7. The learned Additional Sessions Judge found that no offence was made out against any of the accused under Section 447 IPC, because possession of the land in question had not been transferred from the accused to Premsingh and Dhir Singh according to law. He held that Narsaram had received the injuries found on his person at the hands of Jang Singh accused and died due to injury No. 1 received on the head. He also came to the conclusion that the complainant's party had stood in front of the plough of Jang Singh and had obstructed him from ploughing the field and thereupon Jangsingh and Gurdevsingh dealt blows to Thakur Ram and on intervention by Ram Singh PW 5, they also inflicted injuries on Ram Singh. As regards the injuries inflicted to Narsaram, his findings are that Narsaram intervened when Ram Singh was being beaten and snatched the gandasi from Gurdevsingh and at that time Jang Singh dealt blows with the 'jahi' to Narsaram. He held that Jang Singh and Gurdevsingh were justified in beating the complainant's party in exercise of their right of private defence of property, and as regards the injuries inflicted by Jang Singh to Narsaram, he found that Jang Singh got apprehension of danger to the body and, therefore, he caused injuries to Narsaram in exercise of right of self-defence of his own person. In this view of the matter, he acquitted all the accused.

8. Mr. Shrimad learned Deputy Government Advocate has contended before us that it has been established by Ex. P.14 and the oral evidence of PW. 1 Moti Ram Patwari. PW. 2 Thakur Ram and PW. 5 Ram Singh that Premsingh and Dhir Singh had been given possession of the land in question on 17-4-1964 in accordance with law, and therefore Thakur Ram, Ramsingh PW 5 and the deceased Narsaram were perfectly within their rights to go to the field in question to prohibit the

accused from ploughing it. It is, therefore, contended by him that the accused had no right of private defence of property. He has also challenged the finding of the learned Additional Sessions Judge to the effect that Jang Singh was justified in giving blows with the 'jahi' to Narsaram in exercise of his right of private defence of person.

9. We have gone through the statements of PW. 1 Motiram PW. 2 Thakur Ram and PW.5 Ram Singh, and have also carefully perused the contents of Ex. p.14. It is not disputed before us by the learned Deputy Government Advocate that the accused party was in possession of the field before 17-4-1964 and unless the prosecution is able to prove that the possession of the field in question was handed over to Premsingh and Dhirsingh through Ram Singh on 17-4-1964, the possession of the accused party over the field with the presumed to have continued. Apart from Ex. P/14, another document in connection with the transfer of possession relied upon by the prosecution and placed on the record is Ex. P/3, which is a copy of order of the Colonization Commissioner, Bikaner dated 13-2-1964 stating that the possession of the land be got delivered to Premsingh from Ramsingh accused. This order purports to be based on some direction given by this Court in some writ matter. The prosecution case is that in compliance with this order of the Colonization Commissioner, the Tehsildar issued a tehri to the Patwari dated 14-4-64 in pursuance of which PW 1 Motiram went to the spot and delivered possession of the land to Ramsingh PW. 5 on behalf of Prem Singh and Dhirsingh. The order of the Colonization Commissioner Ex. P.23 does not show that it pertains to the land in dispute. The prosecution has not placed on record the order of the High Court on the basis of which this order purports to have been passed. The Tehri of the Tehsildar to the Patwari too has not been placed on the record. The prosecution case is that at the time when Ex. P/14 was written at the spot, the accused Jangsingh was present, but he refused to sign it. This part of the prosecution case has been disbelieved by the trial court and we also do not see any reason to take a contrary view. It is beyond dispute that no previous notice was given to any of the accused regarding the delivery of possession of the land in question to Prem Singh and Dhir Singh. We are also not impressed with the statement of PW. 1 Motiram Patwari on the point. He admits that no crop was standing at the time when possession was handed over to Ram Singh. He was not

able to say as to who was in actual possession of the field in question on the day when Ex. P/14 was written out on the spot. He is not able to point out the name of the driver of the tractor which had been used by the complainants at that time. Though three motbirs are alleged to have been present at the spot, yet signatures of none of them were taken on Ex. P/14. The memo which is deposed to have been prepared at the spot showing the actual transfer of the land has not been placed on the record. At the top of it all, the prosecution has not made any effort to put on record the judgment or the order by which the allotment in favour of the accused was cancelled and the land was reallocated to Prem Singh and Dhir Singh. In these circumstances we are inclined to hold that the prosecution has failed to prove that the complainant's party had been put in possession of the land in question on 17-4-1964. The learned Additional Sessions Judge has, in our opinion, come to a rather contradictory finding on this point. At one place he has observed that the possession of the disputed land was transferred to Prem Singh and Dhir Singh by Motiram under the orders of the Tehsildar, and at another place, he has come to the conclusion that Ramsingh (deceased) was in possession of the disputed land on 17-4-1964, and he was not evicted or dispossessed from this land in accordance with law nor was any notice of the alleged transfer of the disputed land to Prem Singh and Dhir Singh by Moti Ram Patwari given to the accused. To us, it appears that the prosecution has failed to prove that the accused had been actually dispossessed from the land in question on 17-4-1964 and Prem Singh and Dhirsingh had got possession of the land in question on that date. The question then arises whether the complainant's party had any right to enter the field and obstruct the accused from ploughing it.

10. Learned Deputy Government Advocate has argued that even though possession of the land in question may not have been given to Ram Singh on behalf of Prem Singh and Dhir Singh after following the proper procedure and after giving due notice to the accused, yet the complainant's party had entered into the field in exercise of their bonafide claim to the land. It is argued that the complainant's party had succeeded in the litigation and had obtained a judgment in their favour. In these circumstances, it is contended, that the accused had no right of private defence of property against the complainant's party. Reliance in this connection is placed on *Jawan Mai v. Mst. Bhanwari* 8 I.L.R. 1958 Raj. 904. That

was a case under Section 448 I. P.C. and the accused claimed that she had entered the house under a bonafide claim of right. Their Lordships were pleased to hold that if the court comes to the conclusions that there was a bonafide claim of right, then it has to consider the question of the dominant intention of 'he accused behind the entry and decide it with reference to the circumstances and facts of the case. It was observed that the court can hold the accused guilty of an offence under Section 448 only if it finds that the dominant intention of the accused was to commit an offence or to insult, intimidate or annoy the person in possession. It was further observed that if the dominant intention is merely to make an entry peacefully no offence could be held to have been made out. On the basis of this ruling, it is submitted, that Thakur Ram, Ram Singh and Narsaram had entered the field under a bonafide claim of right and therefore they could not be said to have committed a criminal trespass, and, hence, there was DO right of private defence of property against the complainant's party. We, however, find it difficult to accept this submission. We, have not to decide here whether the complainant's party could have been convicted of an offence under Section 448 IPC, but what we have to see is whether the complainant's party can be treated as trespassers, and whether the accused were justified in thinking that a criminal trespass was being committed? We do not mean to suggest that the complainant's party had not a semblance of right in respect of the field, but in the absence of the necessary material having been placed on the record, and there being no sufficient proof to hold that the possession of the field in question had been transferred to Premsing and Dhirsingh according to law, we must hold that the entry of the complainant's party into the field was sufficient in the circumstances of the case to cause annoyance to the accused. It is in evidence of PW. 5 Ramsingh that they not only verbally prohibited the accused from ploughing the field, but physically obstructed the latter by standing against the plough. It is not denied that initially the land had been attempted to the accused and therefore unless they had been lawfully evicted, they had a right to protect their possession on the land. In these circumstances, we are of the opinion that the accused had the right of private defence of property, but the right did not extend to the voluntarily causing of death. It is clear from the evidence of PW. 5 Ram Singh and PW. 6 Rajaram that Jang Singh and Gurdevsingh inflicted injuries to Thakur Ram and Ramsingh only when

the latter asked them not to plough the land & had physically obstructed the accused from carrying on the ploughing operations. We have looked into the injury of Thakur Ram and Ramsingh and but for one injury on Ram Singh which is a fracture of the upper end of metacarpal bone of the left finger, the rest are all simple. Looking to the nature of the injuries which were found on the persons Thakur Ram and Ramsingh, we are not prepared to hold that the accused had inflicted more harm than what was necessary for the purpose of protecting their possession over the land. It appears that the intention of the accused was only to drive away the complainant's party from the field so that the accused may be able to plough the land without hindrance. So far, it appears that the accused had not exceeded their right of private defence of property.

11. Then we come to the injuries received by the deceased Narsaram. The prosecution case is that when Narsaram saw the accused Jang Singh and Gurdevsingh beating Thakur Ram and Ram Singh (PW. 5.), he raised a hue and cry and asked the accused not to beat Thakur Ram and Ramsingh. Thereupon Jang Singh gave a blow with the 'jahi' on the head of Narsaram which felled him to the ground and thereafter Jang Singh further belaboured Narsaram with the result that Narsaram received the four injuries mentioned in the earlier part of the judgment.

12. The learned Counsel for the accused-respondents has not disputed the part assigned to Jang Singh in beating Narsaram, but he has contended that Narsaram tried and had actually succeeded in snatching the gandasi from the hands of Gurdevsingh, and that caused an apprehension in the mind of Jang Singh that Narsaram would either kill either of the accused or may cause grievous hurt with the gandasi and therefore in exercise of right of private defence of his own person and other accused namely Gurdevsingh and Ramsingh (deceased) Jang Singh inflicted blows with the 'jahi' to Narsaram with a view to disable him and to render him incapable of harming any of the accused. In this connection, he has placed reliance on the dying declaration of Narsaram Ex. P/30 wherein Narsaram has stated that he had snatched the gandasi from the hands of Gurdev Singh and thereupon Jang Singh beat him with a 'jahi'. He has also referred to the statement of PW. 5 Ramsingh who has stated that Narsaram had caught hold of the gandasi

held by Gurdev Singh and snatched it from the hands of Gurdevsingh. To repeat his own words, he has said:

exj ujlk jke us xq:nsoflag dh xaM+klh [kkslh % Nhuh % ugh Fkh

The words '[kkslh and 'Nhuh' are synonymous. The word '[kkslh' is a colloquial term whereas the word 'Nhuh' is Hindi, but both mean the same thing. In face of this evidence we must accept the version given by the defence namely that Narsaram snatched the gandasī from the hands of Gurdev Singh, while the latter was beating Ram Singh with it. The question, however, is whether this act of snatching Gandasi can be said to have given rise to a reasonable apprehension in the mind of Jang Singh of danger to himself and the other accused. The right of private defence of the body commences only on a reasonable apprehension of danger to the body caused by an attempt or threat to commit an offence. There must be an attempt or threat and consequent there on an apprehension of danger. Thus, reasonable ground for apprehension of danger to body is an essential requisite for exercise of the right of private defence of person. In this connection, we may refer to Section 102 Indian Penal Code which deals with commencement and continuance of the right of private defence of the body, It ready, as follows:

The right of private defence of the body commences as soon as a reasonable apprehension of danger to the body arises from an attempt or threat to commit the offence though the offence may not have been committed and it continues as long as such apprehension of danger to the body continues.

The section itself provides that a reasonable apprehension of danger to the body must arise from an attempt or threat to commit the offence. There is nothing on the record to show that having snatched the gandasi from the hands of Gurdev Singh, Narsaram attempted to beat anybody with it, or gave any threat to commit an offence. Learned Counsel for the accused respondents has, however, submitted that the threat was implicit in the act of Narsaram in snatching the gandasī from Gurdev Singh and that threat must be inferred even though there is no positive evidence about it. It must, however, be remembered that Narsaram had done nothing in the whole incident and he came to the rescue of Ramsingh only when he saw that Gurdev Singh was using gandasī on him. His object in snatching the

gandasi was clearly to save the life of Ramsingh. In these circumstances, we are unable to accede to the contention advanced by the learned Counsel for the accused that there was an imminent danger to the accused when Narsaram snatched the gandasi from the hands of Gurdev Singh. We may recollect that it was the accused's party who has started attack, though in the exercise of the right of private defence of property. But having exercised that right within reasonable limits, the accused or any one of them had no right to inflict the injuries which Narsaram had received at the hands of accused Jang Singh. Apprehension must be reasonable and must arise from an attempt or thereat to commit an offence. We are firmly of the view that no circumstance existed which could give rise to a reasonable apprehension in the mind of the accused that Narsaram would do any harm to any of them. Moreover, the head injury inflicted on Narsaram was of a very severe type. The post-mortem examination report shows that there was a sagittal linear fracture involving the right parietal and right temporal bone, and going up to the middle of right middle cranial fossa. According to the statement of doctor, this injury did not actually cause death, yet coupled with attack of dysentery, it resulted in the death of Narsaram. The nature of the injury also shows that the blow was given on a vital part of the body with great force, Jang Singh did not stop short after causing this injury on his head and even when Narsaram had fallen on the ground, he went on beating Narsaram and a contusion 5'x11/2 x11/2' was caused on the right lower thoracic region of the back. In these circumstances we are clearly of the opinion that Jang Singh had no justification to cause these injuries to Narsaram and he is clearly guilty for causing these injuries. Learned Counsel for the accused relied on *NgaNi v. Emperor* AIR 1935 Rangoon 391, *Janki Pasban v. Emperor* AIR 1943 Pat. 6 and 1946 M.L.R. 6 Cr. *Sarkar v. Noor Mohammed* 1946 M.L.R. 6 Cr. We have looked into these authorities and are of the view that they are clearly distinguishable on facts. In *NgaNi v. Emperor* AIR 1935 Rangoon 391, it was held that-

It would be circumscribing the right of private defence of the body with meticulous and unjustifiable restrictions if it were to be held that, when the person attacked had managed to obtain the weapon from the grasp of the attacker, he was not to be allowed to use that weapon in his defence in order to prevent the attacker from regaining possession of it, and on the evidence it is clear that that is all that

the appellant did in this case.

In the present case, however, Narsaram was not the attacker and therefore these observations can have no application. The same is the view taken in *Sarkar v. Noor Mohammed* 1946 M.L.R. 6 Cr. The case of *Janki Pasdan v. Emperor* AIR 1943 Pat. 6 seems to us to have no relevance to the facts and circumstances of the present case.

13. The learned additional sessions Judge while dealing with the case against Jang Singh for injuries caused by him to Narsaram, has held that when Narsaram tried to snatch the Gandasi from Gurdevsingh, Jang Singh dealt 'Jahi' blow on the head of Narsaram and he was justified in dealing this blow because he might have apprehended grievous hurt at the hands of Narsaram with gandasi. In this view of the matter, he found that Jang Singh caused the head injury to Narsaram in His right of self-defence of person. We have already observed above that there must be a reasonable apprehension in the mind of the accused of danger to the body arising from any attempt or threat on the part of the attacker before the right of self-defence of person can be exercised. In our view, there was no reasonable apprehension of danger to the body of the accused from the act of Narsaram in snatching the Gandasi from the hands of Gurdev Singh.

14. It was also faintly argued that if it be held that Jang Singh had no right of private defence of body against Narsaram, yet he had the right of private defence of property against him. We now ever, are unable to accept this submission, firstly because there is no positive evidence led on behalf of the prosecution that Narsaram did anything so as to annoy the accused or obstruct them in their act of ploughing. He was a man of 65 years and had come near only to the rescue of Ram Singh when he was being beaten by a gandasi by Jang Singh. The right of private defence of property ended with the beating given by Jang Singh and Gurdev Singh to Thakur Ram and Ram Singh and in any view of the matter there was no justification for Jang Singh for having given such a severe blow with a 'Jahee' on the head of Narsaram. We, therefore, hold that there was neither private defence of property or of person in attacking and beating Narsaram.

15. So far as the nature of the offence is concerned, we consider it safe to convict Jang Singh for causing grievous hurt under Section 325 I.P.C. firstly because the medical evidence whether the head injury was sufficient in the ordinary course of nature to cause death or was likely to cause death is not clear and secondly Narsaram had actually been discharged from the hospital and was re-admitted after an attack of dysentery and thereafter died. In these circumstances, it would be safer to convict Jang Singh under Section 325 IPC for causing grievous hurt to Narsaram.

16. Accordingly, we allow this appeal so far as Jang Singh is concerned to the extent that we set aside his acquittal in respect of the injuries caused by him to Narsaram and convict him under Section 325 IPC. In all the circumstances of the case, we feel inclined to hold that the ends of justice will be adequately met if Jang Singh is sentenced to one year's rigorous imprisonment and a fine of Rs. 300/. We accordingly convict him under, Section 325 IPC and sentence him to one year's rigorous imprisonment and a fine of Rs. 300/-/. In default of payment he shall undergo further imprisonment for three months.

17. The District Magistrate, Ganganagar is directed to take immediate steps to get the accused Jang Singh arrested and send him to jail to undergo the sentence awarded to him.

The appeal against Gurdev Singh is dismissed.

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