

The State of Rajasthan Vs. Murari and ors.

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Court : Rajasthan

Decided On : Apr-26-1980

Reported in : 1980WLN(UC)193

Judge : Kanta Bhatnagar, J.

Appeal No. : D.B. Criminal Appeal No. 716/72

Appellant : The State of Rajasthan

Respondent : Murari and ors.

Disposition : Appeal dismissed

Judgement :

Kanta Bhatnagar, J.

1. The respondents were tried for the offences under Section 302, 307, 147, 440 and 447 Indian Penal Code by the Session Judge, Alwar By his judgment dated 19-7-72 the learned Session Judge acquitted all the respondents for the charges framed against them.

2. Being dissatisfied by that judgment of acquittal the State of Rajasthan has preferred this appeal.

3. Briefly stated the facts of the case giving rise to this appeal are that at village- 'Moja Deothana' there was a land with Nos. 77-78 known as 'Jhalra ki-Talai'. That land was sold by Angad Singh and Jitendra Singh uncle of Bhanwarsingh for Rs. 1350/- to the respondents Murari, Shanker, Puniya, Prabhati, Sitaram and Kanahiya. The said sale deed Ex. P. 1 was executed on 15-6-70 and got registered. It is alleged that though there was a recital in the sale deed for handing over the possession of the land to the purchaser. Bhanwar Singh s/o Narain Singh cultivated grain crop on those fields. Bhanwar Singh wanted sale to be set aside and therefore he had a talk with Murari respondent and with the intervention of Shiv Dan returned the amount of Rs. 1350/- to Murari and took the registry from him.

4. On 25-10-71 at about 9.00 a.m. Murari respondent with his other companions tried to uproot the Grain crop of Bhanwarsingh. Bhanwarsingh on being informed by Jitendra Singh, went to the field Arjun Singh also accompanied him. After sometime Jagansingh, Jitendra Singh, Rajendra Singh and Angad Singh also reached. All the six respondents were ploughing the field. Bhanwarsingh restrained them from doing so but in vain and there was exchange of abuses between them. The respondents gave beating to Bhanwarsingh and others of his party. Arjun Singh became unconscious. Arjun Singh succumbed to his injuries. Bhanwarsingh and other injured persons were taken to Alwar Hospital. Bhanwar Singh was admitted there. One Bhanwar Singh s/o Kalyan Singh happened to reach there at the field at the time of the occurrence. He went to Police Station, Kherli and lodged & written report Ex. P. 8 at 7.00 p.m.

5. Dr. Hitesh Kumar Mathur conducted the autopsy on the dead body of Arjun Singh on 25-10-71 and noted the following injuries on his person:

External Injuries:

1. Swelling with fracture of underlying right parietal bone 5' x 4' on right parietal region of scalp
2. Swelling with fracture of underlying left parietal bone 5' x 4' on left parieto temporal region of skull

3. Black eye 2' x 1 1/2' on upper and lower lids of right eye

4. Lacerated wound with fracture of underlying ulna bone 1/2' x 1/4' x 1/4' on middle part of left forearm posterlorly

Internal Injuries:

1. Clotted blood underneath the scalp on the temporo-parietal region of both sides.

2. Fracture of parietal bones on both sides.

6. According to the Doctor the cause of death of deceased Arjun singh was due to compression of brain matter resulting from injuries No. 1 and 2 and fracture of the skull bones. All the injuries were antemortem in nature. Doctor prepared the post mortem examination report Ex. P. 34

7. Dr. Mathur also examined Jagansingh, Jitendrasingh, Rajendra Singh and noted 3, 5, 5 pad 2 injuries on their person? respectively. All the injuries except one injury of Bhanwarsingh were simple in nature and caused by blunt object One injury of Bhanwarsingh was grievous in nature and caused by blunt object.

8. Ram Charan, Head Constable (PW 11) chalked the formal First Information Report Ex. P. 28. On the basis of the First Information Report Ex. P. 28 the Head Constable proceeded for the investigation and conducted the necessary investigation. Bhagwan Singh Circle Inspector (PW 10) took the investigation of the case in hand and arrested the respondents vide memos Ex P.11 to Ex. P.15. During the course of investigation 'lathis' were recovered from the respondents, in pursuance of the information furnished by them to the Circle Inspector. After completion of investigation chargesheet again it the respondents was filed in the Court of Munsif Magistrate, Lachhmangarh. The learned Munsif finding a prima facie case exclusively triable by the Court of Sessions, committed the respondents to the Court of Sessions Judge, Alwar to stand their trial. The learned Sessions Judge charge sheeted the respondents for the aforesaid offences and recorded their plea. All of them denied the indictment and claimed to be tried. In order to substantiate its case prosecution examined 11 witnesses in all. Except respondent Murari, all the rest denied the allegations levelled against them. Murari in his

statement under Section 342, Criminal Procedure Code (Old) has stated that half share towards the cost of the deputed field was sold away to him and other accused by Angadsingh and Jitendra Singh and possession was also delivered to them. He also stated about the suit filed by him in the Munsif Court, Lachhmangarh against the complainant party and obtaining a temporary injunction against them to interfere in his possession. That on the day of the occurrence when his gram crop was standing on the disputed field the complainant party armed with lathis went there and uprooted the crop and on restraining, they caused beating to him and when he fell down his brother Prabhati and Puniya reached there. To substantiate this contention two defence witnesses were examined. The learned Sessions Judge held that the accused party was in possession of the disputed land on the relevant date and the complainant party being aggressor the act of the accused party was in exercise of their right of private defence. In view of these findings, the learned trial judge passed the judgment of acquittal as stated earlier.

9. Mr. H. N. Calla, learned Public Prosecutor while assailing the findings of the learned Sessions Judge strenuously contended that without there being any convincing evidence to establish the possession of the accused party on the field the learned trial judge has legally erred in holding the complainant party as aggressors. According to him the case of Bhanwarsingh that the purchased money was returned to Murari and registry taken back from him has been duly established and therefore the accused party had no right over the land in question.

10. Meeting out these arguments, the learned Counsel for the respondents has submitted that there was the injunction order against the complainant party and therefore if they had gone to the field armed with lathis there was no alternative for the accused party but to save their person and property especially so when there was beat injury sustained by Murari at the hands of the complainant party.

11. This is the admitted position that Angadsingh and Jitendra Singh sold the field to the respondents. The pertinent question calling for answer is as to which party was in possession of the field at the relevant date. The prosecution case rests on the contention of Bhanwarsingh (PW 1) that the money was returned by him and

registry was taken back which he produced in the Court. Shiv Dan (PW 6) has been examined to substantiate this contention.

12. Relevant it is to note that in his statement recorded by the Police in this case, Bhanwar Singh (PW 1) has nowhere stated that the money was returned to Murari. Bhanwar Singh had filed a suit for cancellation of the sale on 13-7-77. He has admitted in his cross examination at the trial that he did not take this plea about money having been returned to Murari. This omission on the part of Bhanwar Singh to take this plea in the suit filed by him and his failure to bring this fact to the notice of the police during the investigation of this case gives strength to the arguments of the learned Counsel for the respondents that it is an after thought and Shiv Dan (PW 6) was cooked up witness to substantiate this contention. Persons before whom according to Shiv Dan the money was paid have not been examined by the prosecution.

13. Another fact relied on by Mr. Calla is that the mutation of the land was refused in favour of the respondents. Relevant it is to note that Mahesh Chandra Patwari (PW 5) examined by the prosecution on this point who has proved Ex. P.6 has stated that the mutation was refused in absence of the parties. This evidence therefore is of no help to the prosecution to substantiate its case that the sale property continued in possession of the complainant party and the purchase money was returned to Murari. Simply because somehow or other the registry came in possession of Bhanwar Singh for which the contention of Murari is that it was taken by Shiv Dan from his son, it cannot be said that money was returned and the possession of the property said to have been given as per recital of the sale deed was taken back.

14. The evidence in favour of the respondents taken into consideration by the learned trial judge to hold their possession of the field is two fold. First, the recital in the sale deed about the possession of the property being delivered to the purchasers and second, the injunction order passed on 21-9-71 by the Assistant Collector, Lachhmangarh against Bhanwar Singh, Arjunsingh etc. restraining them from interfering the possession of half the land towards east in the fields No. 77-78 in a suit filed by Murari for perpetual injunction. The learned judge has observed

that from the site plan it appears that the quarrel had taken place on the north east side of the disputed land Bhanwar Singh PW. (sic)) had not denied the filing of the suit or the issuance of temporary injunction against him or others but stated that he came to know of it after two months of the occurrence. He has admitted that he had filed an application to get that order set aside but could not tell the result.

15. In this view of the matter when there is specific evidence about the complainant party being injuncted from entering the field and interfering the possession of the respondents there arises no question of Bhanwarsingh sowing the gram crop on the field and the respondents damaging the same.

16. We are, therefore of the opinion that the learned trial judge has arrived at a correct conclusion that the disputed land was in possession of the respondents on the day of occurrence. The natural corollary of this would be that it was the complainant party which was the aggressor.

17. Mr. Calla next argued that assuming that the possession was with the respondents, in view of the multiple injuries caused to five persons of the complainant side and one of them succumbing to his injuries clearly indicate that the respondents exceeded their right of private defence, even if it was available to them.

18. As stated earlier five persons from the complainant side were injured. One of whom met his death and Bhanwar Singh had one grievous injury. Doctor Mathur had also examined Murari respondent and noted following injuries on his person

Lacerated wound with crust formation $1/2 \times 1/10'$ x $1/10'$ on the right parietal region of the scalp vertically,.

19. This injury according to the Doctor was simple and caused by blunt object. The duration of the injury is said to be six days which is inconformity with the defence case that the injury was caused on 25.10-71 as Murari was arrested and examined on 30-10-71, Prosecution has not cared to explain this Injury but in cross-examination of Bhanwarsingh he admitted this much at least that in this quarrel Murari sustained injury which according to him was caused by the lathi of Prabhati

Chajya (p. w.8) has stated that in this incident Murari had sustained injuries but his contention is that it was caused by his own party.

20. It is Important to note that except the formal witnesses all the prosecution witnesses are of the same family and four of them being are interested in the prosecution case. Chajya (p.w.8) has admitted to be the 'Hall' of Bhanwarsingh (p.w.1) and therefore he also falls within the definition of interested witness. Bhanwarsingh s/o Kalyansingh, who is said to have reached there, could have thrown light on the actual facts but for the reasons best known to the prosecution, he had not been examined and for that reason the First Information Report (Ex. p.8) lodged by that Bhanwarsingh S/o Kalyan Singh could not be proved by the informant. The First Information Report not being a substantive piece of evidence could not be read in evidence. In absence of any confrontation from the informant the earliest version of the prosecution story could not be brought to the notice of the Court. In able nee of any independent witness to support the prosecution case and there being no explanation of convincing nature for the injuries sustained by respondent Murari it cannot be said with certainty as to what the origin or the genesis of the quarrel was? We are alive of the principle that it is not in all cases that the non explanation of the injuries on the persons of the accused proves fatal for the prosecution. It depends on the circumstances of the given case and if the injuries are of superficial nature the absence of explanation does not much damage the prosecution case. In the present case the injury of Murari is of course simple in nature but it cannot be over looked that it is on the vital part of the body i.e. the scalp. This factor is to be looked together with the fact that the respondents were on the land in their possession and the complainant party reached there as aggressor. The question requiring determination is whether this one injury sustained by Murari justifies the action of the respondents to cause so many injuries to so many persons of the other side and therefore their case does fall within the ambit of exceeding the right of self defence.

21. Section 100 Indian Penal Code deals with the cases when the right of private defence of body extends to causing death. By virtue of second clause of that Section the right of private defence of the body extends to the voluntary causing of death or of any other harm to the assailants if the offence which occasions the

exercise of the right is an assault as may reasonably cause the apprehension that grievous hurt will otherwise be the consequence of such assault. There is of course no grievous hurt sustained by Murari but the simple hurt is on the vital part of the body and there was every reason for him and others going to his rescue to apprehend grievous injury. When there is a quarrel and one party strikes another, neither the blows inflicted by the other side can be counted nor the force be measured nor the nature calculated. The learned Sessions Judge has discussed this argument in detail and In our opinion has arrived at a correct conclusion on the point.

22. We are therefore, of the opinion that a probable story has been advanced from the defence side. The appellate court is expected to be slow in interfering with the judgments of acquittal unless the findings are perverse. In the present case the learned Sessions Judge has discussed the oral as well as documentary evidence in detail and his findings based on good reasoning call for no interference.

23. Consequently, the appeal filed by the State of Rajasthan having no merits falls. The respondents are on bail, they need not surrender to it. Their bail bonds stand discharged.