

Kamla and ors. Vs. State

Kamla and ors. Vs. State

SooperKanoon Citation : sooperkanoon.com/760973

Court : Rajasthan

Decided On : Dec-08-1982

Reported in : 1982WLN(UC)397

Judge : Kanta Bhatnagar, J.

Appeal No. : S.B. Criminal Appeal No. 214/1977

Appellant : Kamla and ors.

Respondent : State

Judgement :

Kanta Bhatnagar, J.

1. This appeal is directed against the judgment passed by the Additional Sessions Judge, Dungarpur dated 1-3-1977. By that judgment the learned trial judge convicted the appellant Kamla under section 147, 325 and 447 IPC and sentenced him to one year's rigorous imprisonment on the first count, one year's rigorous imprisonment on the second count and one month's rigorous imprisonment on the third count. The appellant Hemji was convicted on the offence under Section 148, 324, 325/149 and 447 IPC and sentenced to 1 year's rigorous imprisonment on the first count, six month's rigorous imprisonment on the second count, one year's rigorous imprisonment on the third count. The appellants Roopa and Dhoolia were convicted for the offences under Section 147, 325/149 and 447 IPC and

sentenced to one year's rigorous imprisonment on the first two counts each, six months Rule 1 on the third count and one month RI on the fourth count. Appellants Panchya son of Mawa, Panchya son of Hemji, Smt. Lalki, Smt. Nathi and Smt. Manki were given benefit under Section 4 of the Probation of Offend Act and were directed to execute personal bond for an amount of Rs. 1,000/- with one surety in the like amount to maintain peace and be of good behaviour for a period of one year.

2. Briefly stated the facts of the case giving rise to the trial of the appellants and the present appeal are as under on 21-12-74 a report was filed by the complainant Pemji PW 1 at Police Station, Aspur to the effect that he had been allotted 8 bighas of land at 'Chhapria ka Pather' at Munja Gol 5 or 6 years back and since then he was in cultivatory possession of the the same. That, on 21-12-74 the accused party started ploughing field biloging to the complainant. That, when Dhaniya, cousin of the complainant went to restrain the appellants from ploughing the field, they gave him a beating with axe, lathis and stones. At this Pemji PW 1 went there. He was also given, a beating. Thereafter Amra Nathu, Heera and Gautam also reached there and they were also given a beating by accused party. That, the accused took to heels. That, the injured have been brought to the Police Station. The police registered a case under Section 147, 148, 447, 307, 323 and 324 IPC. The injuries of the members of the complainant party were examined by Dr. Nand Kishore (P.W. 12). Nathu, Gautam and Dhaniya are said to have sustained fractures on their arms and the remaining injured persons had simple injuries on their persons. The SHO Chunni Lal (PW 14) went to the filed of occurrence end inspected the stte. He prepared the site inspection memo Ex. P. 1 and site plan Ex. P. 2. During the course of investingation lathis were recovered at the instance of the appellants in pursuance of the information furnished by them. Upon completion of necessary investigation charge-sheet against the appellants was filed in the Court of Munsiff and Judicial Magistrate Dungarpur. The learned Magistrate finding it to be a case exclusively triale by the Court of Sessions committed the appellants to the Court of Sessions Judge, Udaipur to stand their trial. The Learned Sessions Judge, transferred the case to the Additional Sessions Judge, Dungarpur for trial. The Additional Sessions Judge Dungarpur charge-sheeted the appellants for the aforesaid offences and recorded their plea. All of

them denied the indictments and claimed to be tried. To substantiate its case prosecution examined 14 witness-in-all. All the appellants in their statements under Section 313 Cr. P.C. totally denied the allegations levelled against them. Smt. Manki, Panchyia son of Hemji stated that the disputed field belonged to them. The appellant Hemji stated that the disputed field was allotted to him and the neighbouring field belonged to Pemji. That, the party of Pemji had come to the field belonging to him (Hemji). He also stated that Pemji went to grab his field and has, therefore, instituted a false report against them. No defence witness was examined.

3. The learned Counsel for the appellants strenuously contended that there is evidence of Patwari Bhagwatilal PW 10 to the effect that one part of arezi No. 2705 was allotted to Pemji complainant and the other part was allotted to appellant Hemji and intention of the complainant Pemji to grab the whole of the land is evident. Mr. Sharma submitted that the prosecution could not substantiate its case that the place of occurrence belonged to and was in possession of Pemji at the relevant time and, therefore, there arises no question of any criminal trespass by the appellants over any body's a field, nor can it be said to be a case of unlawful assemblance of the appellants to commit any crime. The learned Counsel next argued that there is no specific evidence about any specific act of a particular accused. That, the accused party had sustained injuries at the hands of the appellants but the police did not care to get their injuries examined.

4. Controverting these contentions the learned Public Prosecutor submitted that there is no material to indicate that the accused party had sustained injuries at the hands of the complainant party in the incident. Referring to the statement of the various witnesses the learned Public Prosecutor emphasised that the evidence about Pemji being in possession of the field in question has remained unshattered and, therefore, the defence about the field being in possession of Hemji accused has rightly been dis-believed.

5. This is not in dispute that the area known as 'Chhapriya ka Pather' was Government land five or six years prior to the date of occurrence. The important question for consideration for decision of this appeal is as to whom the field in

question belonged and in whose possession it was at the relevant time. The prosecution case is about criminal trespass by the accused party after forming an unlawful assembly and then using force against the complainant party. Hence, it will have to be seen whether the prosecution cases about the whole of the area belonging to Pemji is correct or the defence about a part of the land being allotted to Hemji and he being in possession at the relevant time is correct.

6. Prosecution examined 6 injured persons viz. Pemji (PW 1), Nathiya (PW 3), Gautam (PW 4), Heera (PW 5), Amra (PW 6), Dhanji (PW 7) to substantiate the prosecution case. It is pertinent to note that all these persons belong to the same family. Nathiya happens to be the father of complainant Pemji, Gautam happened to be the real brother of Nathiya, Heera, and Dhanji happen to be the sons of Gautam. Thus they are cousins of complainant Pemji Amra has admitted that all of them belong to the same family. Prosecution has not cared to examine any independent witness to state as to what was the origin of the quarrel and in what circumstances the injuries were sustained by the injured persons It is important to note that these injured prosecution witnesses have given a categorical statement that the land in question belonged to Pemji. They have denied the suggestion that any land at 'Chhapriya ka Pather' was allotted to Hemji-appellant or he was in possession of any land in the nearby vicinity. The statements of these witnesses in this regard have been falsified by the statement of Patwari Bhagwati Lal P.W. 10. The Patwari, referring to the Girdewari of the current year or arazi No. 2705 stated that this Khasra No. 2705 consists of 2 pieces No. 3932/2705 and 3952/2705. The Patwari further stated that the cultivator of first portion was Pemji son of Nathia and that of the second portion Hemji son of Keva Meena. He also proved the Khasra Girdewari Ex. P. 12-A of Samvat year 2031 of the land in question. In cross-examination the witness admitted that Hemji accused had cultivated in one part of Khasra No. 2705. The Patwari further admitted that he had gone to the site after the incident and had seen the field of Hemji. According to the witness Nathya, Pemji etc. claim whole of the land to be theirs. In view of this specific evidence of Patwari it can be inferred that whole of the land in question did not belong to the complainant Pemji as asserted by him and his witnesses, rather a part of the land belonged to Hemji appellant and was in his cultivatory possession. Though no defence witness has been examined to substantiate the

plea taken by the appellant Hemji and others that the land in question belonged to him and Pemji wanted to grab the whole land, the Patwari substantiates their contention. It is pertinent to note that the SHO has not stated as to whom the field in which the beating is said to have taken place actually belonged. From the statement of Patwari, that he had gone to the site after the occurrence and seen the field of Hemji, the learned Counsel for the appellants has built up the argument that if the place of occurrence would have been the field of Pemji, the Patwari would have been asked to inspect the same after the occurrence instead of the field of Hemji appellant. There is force in the arguments. The prosecution has not succeeded in locating the place of occurrence to be the field belonging to Pemji and his family members. In this view of the matter the finding of the trial court about the criminal trespass by the accused party is not sustainable.

7. Coming to the question of appellants forming an unlawful assembly it may be observed. that if the field of Hemji was there, his family members in the natural course, of events could have been there and their being together in itself will not make them liable for forming any unlawful assembly. It is pertinent to note that the prosecution witnesses have asserted their right over the whole of the land whereas the Patwari has categorically stated that there were two parts of the land one part was in the cultivatory possession of Hemji appellant. The deposition of Patwari that Nathiya, Pemji ate. were claiming the whole of the land as. theirs itself shows the greedy attitude of the nonclaimant and his family members to grab the land belonging to the accused party. This lends support to the arguments advanced by the learned Counsel for the appellants that the complainant party in group might have gone to disturb the peaceful possession of the appellant accused party and the quarrel, if any, might have ensued for that reason. As observed above prosecution has not come with clean hands in the case. The origin of the quarrel, the rights and possession of the respective parties in the portions of 'Chhapriya ke Pather' have been concealed or mis-represented by the complainant and his witnesses. The Patwari has not supported the prosecution case about Pemji being in possession of the whole of the field. Merely because six persons of the complainant party had sustained¹ in writs at the hand of the accused party, it can not be said that the accused party had assembled there in order to commit any offence or the quarrel was in pursuance of any common

object of the accused party. Thus the charge for forming an unlawful assembly does not stand substantiated. In view of the conclusion that the appellants were not members of any unlawful assembly at the time of the incident, their conviction for the offences under section 147, 149, and 324 with the help of 149 IPC cannot be maintained. However, even taking it to be a case of a free fight the appellant would be responsible for their individual acts, if proved.

8. There is specific evidence about Hamji causing simple injury with sharp edged weapon to Gautam. Kamla causing grievous injury with lathi to Dhaniya has been convicted for the offence under Section 325 simplicitor and Hemji for the offence under Section 324 IPC simplicitor.

9. The learned Counsel for the petitioner submits that in view of the facts and circumstances of the case the appellants who are guilty because of their individual acts may also be not sent behind the bars after a lapse of such a long period. Hemji and Roopa have remained in custody for about a fortnight. In view of the facts and circumstances and the incident having taken place as back as 1974 I do not consider it to be a fit case, in which these appellants may be sent behind the bars after a lapse of period of 8 years. I am, therefore, of the opinion that ends of justice would be met if the substantive sentence awarded to them for the aforesaid charges is reduced to the period they had remained in custody with imposition of fine.

10. Consequently the appeal filed by Roopa, Panchiya of Mava, Panchiya son of Hemji, Dhooliya, Smt. Lalki, Smt. Nathi and Smt. Manki is allowed and they are acquitted of the charges levelled against them. The appeal filed by Kamla is partly allowed. He is acquitted of the charges under Section 147 and 447 IPC. His conviction for the offence under Section 325 IPC is maintained. The substantive sentence awarded to him for that offences is reduced to the period he had remained in custody so far. He shall be liable to a fine of Rs 101/- (Rs One hundred and one) in default to undergo one month's imprisonment for that offence. The appeal of Hemji is partly allowed. He is acquitted of the charges under Section 148, 325/149 and 447 IPC. However, his conviction for the offence under 324 IPC is maintained but the substantive sentence awarded to him for that offence is

reduced to the period he had remained in custody. He shall also be liable to a fine of Rs 101/- (Rs One hundred & one) in default to undergo one month's simple imprisonment for that offence. At the request of the learned Counsel, Kamla and Hemji are allowed two months time to deposit the amount of fine in the trial court. The appellants Roopa and Dhuliya are on bail. Their bonds stand discharged.

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