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Court : Rajasthan

Decided On : Aug-29-1985

Reported in : 1987(2)WLN824

Judge : Guman Mal Lodha and; Gopal Krishna Sharma, JJ.

Appeal No. : D.B. Cr. Revision Petition No. 148 of 1985

Appellant : Keshra Ram

Respondent : Jodha Ram

Disposition : Appeal dismissed

Judgement :

Guman Mal Lodha, J.

1. There two matters arise from same judgment. one is leave to appeal by the state of Rajasthan and other one is revision petition by the complainant, but in both of them the acquittal of the accused persons-respondents has been challenged. It is not necessary to mention in details, the fact s of the case because, it is admitted that the dispute relates to an agricultural land and both the parties sustained injuries. It is also common ground that main bone of the dispute was regarding possession of the agricultural land. Jodharam claimed the adoption to Gangaram s/o Lachhi and the deceased who was a supporter of Lachhi is said

to be hired labour called for cultivation.

2. The trial court after a detailed discussion of the entire evidence produced in the case, in paras 24 and 25, summed up that from the evidence of the Sarpanch and the Patwari coupled with mutation order it is proved on record that the disputed land was in possession of Jodharam accused-party.

3. Regarding the judgment of the S.D.O. on which reliance is placed by Shri G.C. Chatterjee the learned public prosecutor and Shri A.K. Gupta the learned Counsel for the complainant-petitioner, it is common ground that on the relevant date, there was a stay order of the Revenue Board. Naturally, the Revenue Board being highest in the hierarchy of the revenue authorities, the judgment of the S.D.O. in favour of the complainant can be of no value or credence in order to ascertain possession on that particular date.

4. Having heard the learned Counsel for the parties, we are of the opinion that in the present case, primarily the factum of possession of Jodha Ram accused party has been found to be established by the trial court on very good cogent grounds and credible oral and documentary evidence.

5. We have not been able to find out any serious infirmity in this finding. In our view, once the stay order of the Revenue Board was there and the incident is alleged to have been taken place after about 3 weeks of that stay order, it was the duty of the complainant party to move the Revenue Board for vacation of the stay order or for the clarification or modification of the stay order, as the case may be. Having not done so, and once the stay order was in existence, the accused party of Jodharam was within their legal rights to resist any effort of the complainant to dispossess them or cultivate the land of Gangaram. We are not here 10 determine, whether the adoption of Jodharam was valid or not or even whether it is proved of not as it is required to be proved in civil case.

6. We are impressed by the statement of Sarpanch who has appeared as defence witness that after mutation order he went on the field and divided the land between Jodharam and Lachhi on the spot, by metes and bounds.

7. It has been held in Mana v. State of Rajasthan 1978 RLW 245 that the right of the private defence of property has been respected during all ages under all laws including ancient law of India. So much so that according to out ancient text of Vyavshara Mayukhs of Neelkantha and Manu's dictum was that one may certainly kill without hesitation a man who comes upon him as an Atatayin whether he be a teacher or a child or an old man or a learned Brahamana.

8. Katyayana says, 'one may go on to kill another who approaches as an Atatayin (i.e. with a felonious intent) even if he be one who was thoroughly mastered the Vedas, thereby he does not incur the sin of Brahamana murder.'

9. The ancient Shastras have given great importance to the right of private defence and made it a religious duty of a person to kill a person who is an 'Atatayin if he comes raising his weapon and if one fails to kill him, he would become guilty as a murderer'. In the Mitakashra Galver says. 'He who kills a learned Brahaman who approaches as an Atatayin raising his weapon to strike does not become the murderer of a learned Brahmana. He would be so, if he did not kill him.'

10. Brahaspati says, 'He who kills a Brahmana felon versed in the Vedas and born of a good family does not commit a Brahmana murder, he would be guilty of Brahmana murder if he did not kill him.'

11. The conclusion of Smrati Chandrika is that even a Brahamana felon coming to kill a man is by all means to be slain (Vyavshra Mayukha of Neelkantha by P.V. Pane 1 Ed. 1933 Pp 261, 262).

12. P.V. Kane in his treatise on the history of Dharamsashtra Volume II (Government Oriented Series Class B No. 16), deals with the important question of private defence of person and property as it was recognised by the Dharama Sastra works. He also terms the invader as Atatayin (a desperate man and an aggressor) who is an incendiary or a poisoner or is armed with a weapon or is robber carrying away another's wife or snatching by force a field.

13. According to Katyayane, 'No blame attaches to man who kills wicked man that are about to kill another.' Sanskrit text of it is as follows:

MDrkuka lqUek;kuka bUnq nksZ'k.kks u% A

foo`RrkLrq inkjEekn xqjo.k u o/k , Le`r% AA

dkR;k 800 ckbZ Le`Rp x Ik`- 315

14. In Indian Penal Code, this right has been respected by carrying out exceptions by enactment of Section 103 and 104 etc., IPC.

15. Since we are hearing the appeal against acquittal and we are not allowed to take a different view on the basic question of possession and as both the parties have received injuries substantially, though unfortunately one person of the complainant party died in this incident, we feel that there are no good grounds for entertaining the appeal against acquittal.

16. Consequently, both, the leave to appeal filed by the State of Rajasthan, as well as the revision petition filed by the complainant against acquittal are dismissed.

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