Ram Autar And Ors. vs State on 6 July, 1954

Equivalent citations: 1954CRILJ1710, AIR 1954 ALLAHABAD 771

JUDGMENT

Brij Mohan Lal, J.

1. This is an appeal by six persons, viz., Ram Autar, Bharosa, Binda, Ram Kumar, Raja Ram and Sheo Moorat who have been convicted by the learned Sessions Judge of Banda under Sections 302/149, 325/149, 323/149 and 147, I. P. C. Every one of them has been sentenced to transportation for life and to pay a fine of Rs, 100/ under Section 302/149, to three years' rigorous imprisonment and a fine of Rs. 50/- under Section 325/149, to six months' rigorous imprisonment under Section 323/149 and to one year's rigorous imprisonment under Section 147, I. P. C.

2. It appears that there is a grove known as Gunji Bagh in village Man in the district of Banda. This grove has an area of 3 bighas and 14 biswas. The owners thereof agreed on 1-5-1950 to sell one bigha and 17 1/2 biswas of the grove to the appellants. On 15-5-1950 they agreed to sell one bigha and 17 biswas to the complainant's party. It will thus appear that the total area agreed to be sold exceeded the actual area of the grove by half a biswa.

Pursuant to these agreements the vendors executed a sale deed on 7-11-1950 in respect of one bigha and 17 1/2 biswas of this grove in favour of the appellants and later on they sold 1 bigha and 17 biswas to the complainant's party. This led to a dispute between the parties in respect of an area of half a biswa. The appellants, however, succeeded in getting actual possession over the disputed area and in getting their names mutated over it. They actually sowed crop therein.

3. The complainant's party also made an application for mutation of their names in respect of the disputed area but this petition was dismissed on 31-3-1952.

4. On 11-7-1952 the complainant's party was proceeding towards the disputed grove with the avowed object of upturning the crop which had been sown previously by the appellants therein. The latter are said to have met the members of the complainant's party in the way at a distance of about 6 or 7 furlongs from the said grove and to have enquired of them as to where were they going. They were told that the complainant's party was going to replough the land.

Thereupon a quarrel took place between the two parties as a result whereof one Shankar was killed, Rameshwar received grievous hurt and four others-received simple injuries out of the complainant's group. Three persons received injuries on the appellants' side also. Raja Ram received seven injuries, Ram Autar received eight while Bharosa received one injury only.

5. From amongst the appellants, the injured persons admitted their presence. Others contended that they were not present at the time of occurrence. The persons who admitted their presence had alleged in the Court below that they were returning after attending to call of nature when they were attacked. We may mention at once that the learned Counsel for the appellants has abandoned this theory before us and has accepted the findings recorded by the learned Sessions Judge, viz. that the complainant's party was proceeding towards Gunji Bagh to overturn the crop which had previously been sown by the appellants, that the latter on coming to know of the complainant's intention-offered obstruction and this led to the fight.

6. The first point that arises for decision is whether or not the appellants had the right of private defence of property in the circumstances mentioned above. Section 97, I. P. C.. confers on every person a right, subject to the restrictions contained in Section 99, to defend the property, whether movable or immovable, of himself or of any other person, against any act which is an offence falling under the definition of theft, robbery, mischief or criminal trespass or which is an attempt to commit theft, robbery, mischief or criminal trespass. The complainant's party's act, if completed, would have amounted to mischief and criminal trespass.

7. Under Section 105, I. P. C., the right of private defence of property commences when a reasonable apprehension of danger to the property commences. It is not necessary that the intended offence should be actually committed. Nor is it necessary that an attempt to commit that offence must have actually taken place. All that is required to give rise to the right of private defence is that a reasonable apprehension of danger to the property should commence. It has always to be found out in the particular circumstances of each case whether in those circumstances the person who claims the benefit of the right of private defence had a reasonable apprehension of danger to the property. If the question is answered in the affirmative the right exists; and it is not necessary that the offence or an attempt should actually have been committed.

8. The circumstances in the present case are that a body of persons armed with lathis and accompanied with bullocks and a plough were going with the avowed object of upturning the crop which had previously been sown by the appellants. There could be no doubt about their intention. As a matter of fact, they admitted that they were going to commit the very act which the accused apprehended. There was no time for having recourse to lawful authorities because the police station was five miles away. If any one of the appellants had run to the police station, the mischief would have been done before help could reach from the police station. In the circumstances, the restriction imposed by Section 99 did not come into play. The appellants had a right to protect their property. The mere circumstance that the property was situate at a distance of 6 or 7 furlongs did not prevent the right from coming into existence.

We find nothing in the language of the statute to warrant the conclusion that the right of private defence of property can be exercised on the property itself. Even if the person who is claiming that right happens to be placed at some distance from the property, he can exercise that right pro- vided he finds that damage to property will accrue if the right is not exercised. It was not expected of the appellants to run back to the grove in question and there to arrange for the protection of the property. In our opinion, the right of private defence of property could, in the circumstances of the

present case, be exercised at the place where the two parties met. We have no doubt that the appellants had the right of private defence of property. But certainly that right did not extend to the causing of any one's death. The appellants could prevent the complainant's party from proceeding towards the grove and could commit any offence short of death in their attempt to save the property.

9. While the appellants were asserting that right I they were doing a perfectly legitimate act and the I assembly was not an unlawful assembly. The person from amongst the appellants who exceeded that right and gave the blow which caused Shankar's death did exceed that right. It was his individual act and he alone was liable for the consequences thereof. Unfortunately there is no evidence whatsoever to fix the identity of that individual. The result therefore is that we cannot convict any one of the appellants of an offence under Section 304, I. P. C.

10. Apart from the fact that causing of grievous and simple hurts was a legitimate exercise of the right of private defence, there is no evidence whatsoever as to who caused the grievous hurt or even the simple hurt. There can be no presumption that the lathi wielded by every one of the appellants must have necessarily struck one or the other of the injured persons on the complainant's side. The person who did not hit any one committed no offence. Since it cannot, on the evidence on the record, be found out as to who hit the injured persons and who did not, every one is entitled to the benefit of doubt.

11. As already stated there was no unlawful assembly and the provisions of Section 149, I. P. C., cannot be invoked so as to make the persons who did not give any blow vicariously liable for the acts of their comrades. Section 34, I. P. C., also will not apply because there was no prearranged plan.

12. The result, therefore, is that every one of the appellants must get the benefit of the doubt and be acquitted.

13. The appeal is, therefore, allowed. The convictions and sentences are set aside. The appellants shall be released forthwith unless their detention is required in connection with any other offence. The fine, if realised, shall be refunded,