

Sm. Ram Kali vs Gaya Prasad And Ors. on 1 May, 1950

Equivalent citations: AIR1950ALL653, AIR 1950 ALLAHABAD 653

ORDER

Misra, J.

1. This is a revision against an Order of acquittal passed by the learned Sessions Judge of Rae Bareilly in appeal.

2. The case arose on a complaint filed by Smt. Ram Kali. The facts are not in dispute now. Ram Kali is sister's daughter of one Ram Asrey who died issueless on or about 19th October 1949. The complainant was living with him at the time and she remained in possession of his house and effects after his death. On 29th October 1949, which was the Das wan day, Ram Kali was engaged in the Shuddhi ceremonies when she heard an alarm raised by her mother, Mt. Phuljari. According to her, when she went in she found that Gaya Prasad accompanied by a number of persons had entered the house and was removing boxes and utensils etc., that he persisted in taking them away to his house and that the occurrence took place in broad day light between 12 noon and 2 p. m. on 29th October 1949. The prosecution story has been found to be true by the Courts below and its correctness is not denied now. On behalf of Gaya Prasad it was urged in the lower appellate Court that he was Ram Asrey's nephew, that as such he was the rightful successor of the deceased and that therefore, the house and the properties removed by him being his own, he had committed no offence.

3. From the fact that Ram Kali continued to occupy the house after the death of Ram Asrey and the further fact that she exercised dominion over the articles inside the house alleging herself to be the nearest heir of Ram Asrey the learned Judicial Magistrate in whose Court the trial took place held that the action of Gaya Prasad and his companions in removing the articles amounted to theft notwithstanding the possible existence of a bona fide dispute regarding title. The following passage in his judgment would indicate the view which he took:

"A bona fide dispute does not give him the right to take the law in his own hands. Once one of the rivals enters into possession, his opponent must seek the aid of law and establish his right. This principle of law applies to this case on all fours. Because Ram Kali was asserting her title to the movables in the house the accused felt the necessity of removing them by force. There is no evidence that Gaya Prasad ever exercised control over the household of Ram Asrey. Gaya Prasad and his companions took the law in their own hands and forcibly dispossessed Ram Kali of the articles over which she was exercising possession. The accused in doing so committed lurking house trespass.

The learned Judicial Magistrate, therefore, convicted Gaya Prasad and eleven others of the offence under Section 454, Penal Code and acquitted three persons, giving to them the benefit of doubt. Gaya Prasad, Sant Ram and Ram Lal being the principal culprits were sentenced to pay a fine of Rs. 250 each, in default to undergo three months rigorous imprisonment. Chandrabhan, Kunj Behari, Sita Ram, Ishwar Din, Mahabir, Hanoman and Sheo Bahadur were sentenced to pay a fine of Rs. 60 each or in default to undergo one month's rigorous imprisonment. Deota and Ram Lal being servants, were let off with a warning. The articles which were removed from the house of Ram Kali and which were recovered from the custody of the accused by the police and were duly identified were ordered to be made over to the complainant.

4. The learned Sessions Judge took a somewhat curious view of the law. He held that since the complainant could not be an heir of Ram Asrey under the Hindu law and since Gaya Prasad had a bona fide belief that he was his heir, the act of entering the house and removing the goods could not be deemed to constitute an offence of house trespass the following portion of the judgment of the Sessions Judge would indicate his line of thought;

"Mst. Ram Kali could not have been a claimant of the house and the moveables of Ram Asrey when she was not his legal heir and there is no proof that she had either a will in her favour by Ram Asrey or any other deed of transfer for his property and so if Gaya Prasad claiming to be the nephew of Ram Asrey and as such a bona fide claimant to the said house and the moveables, either alone or with the help of other accused, entered the house of Ram Asrey and removed the moveables therefrom, the conduct of Gaya Prasad or of any other accused who might have helped him in doing so cannot be criminal and much less it can be an offence under Section 454, Penal Code. It has not been shown that any of the movables removed from the house of Ram Asrey really belonged to Mst. Ram Kali as her personal property, apart from its being an asset of Ram Asrey. The evidence on the record shows that the moveables which are said to have been removed from the house of Ram Asrey were kept in boxes and even if any of those articles would have belonged to Mt. Ram Kali personally, Gaya Prasad could not have known that it would be so and when he removed the boxes containing those articles naturally he did so with the bona fide belief that all the articles contained in the boxes were Ram Asrey's and as his nephew, which he alleged himself to be, he was Ram Asrey's legal heir and entitled to have them and to protect them from being taken by anybody else entering the house of Ram Asrey So, in my opinion, the conviction and sentence of the appellants are not justified and they should be quashed. The appellants deserve acquittal of the charge under Sec. 454, Penal Code."

5. The offence of criminal trespass as defined in Section 441, Penal Code, consists in entry into or upon the property in possession of another with intent to commit an offence or to intimidate, insult or annoy a person in possession of such property. The sections which follow Section 441, Penal Code in Chap. 17 are designed to protect possession as distinguished from title in the sense that the question in whom title to the land or property vests is foreign to the offence. Thus entry into or upon

the property in possession of another would be trespass if it is made with the intention specified in the section, namely, with that of committing an offence or intimidating, insulting or annoying the person in possession. This intention is normally ascertained from the circumstances of the case, the chief point to be regarded being the consequences which flow from the act. Intention and ultimate aim and object are two-different things. If a man knows that a certain consequence will follow from his act, it must be presumed that he intends that consequence to arise although he may have had quite a different end in view in doing the act. Purity of motive does not exculpate a man if his criminal intention in making the entry is otherwise proved. It follows that the mere fact that Gaya Prasad put forward a bona fide claim to the property of Ram Asrey would not save him from the consequences of the entry into the house in possession of Ram Kali if his intention was to take the property out of the complainant's possession without her consent and to cause wrongful gain to himself or wrongful loss to her. That he moved the property in pursuance of his aforementioned design was satisfactorily proved. The fact, therefore, that the removal was under the bona fide belief that Gaya Prasad was entitled to the articles as an heir of Ram Asrey is beside the point. The peaceful possession being with Ram Kali and the intention being clear, it was impossible to say that the act complained of did not constitute the offence of criminal house trespass within the meaning of Section 461, Penal Code. There is no evidence that the accused took precautions to conceal their presence. The learned Sessions Judge, therefore, though right in thinking that an offence under Section 454, Penal Code, was not established, ought on the facts to have found the accused guilty of house trespass in order to commit theft, in other words, of an offence under Section 451, Penal Code. His order acquitting Gaya Prasad and his companions completely, I am clear, proceeded on a wrong view of law.

6. In the exercise of its revisional powers, the High Court does not interfere with acquittals unless it is satisfied that there has been a clear violation of the legal principles involved in the case and it is necessary to set aside the decision in order to prevent irreparable injury. That such injury has resulted in the present case can scarcely admit of doubt. The error of law into which the learned Sessions Judge allowed himself to fall is clear and serious. The view that a rival claimant can forcibly take away property in the peaceful possession of another is to my mind wholly misconceived and in the circumstances of the case cannot be allowed to stand.

7. A retrial is not indicated. I allow the application, set aside the decision of the learned Sessions Judge, Rae Bareilly and remand the case to his Court for rehearing of the appeal and deciding it according to law.