Hansa And Ors. vs State on 13 November, 1953

Equivalent citations: AIR1954ALL381

JUDGMENT

Chaturvedi, J.

1. The five appellants before me have all been convicted for the commission of offences under Sections 148, 304 read with Sections 149 & 323 read with Section 149 I. P. C. and have been sentenced to one year's R. I., five years R. I. and six months R. I. respectively.

2. The accused persons as well as Charni deceased and his nephews, Rupa and Mukhtar, resided in village Lachhoi, police station, Jahangira-bad, district Bulandshar.

The prosecution story is that on the 3lst of May 1950 at about 6 P. M. Sukhpal, son of Amar Singh appellant, let loose his she-buffaloes in the sugar-cane field of Charni and his nephews. When Charni and his nephews saw this, they rounded up the she-buffaloes and started with them for the cattle pound. On seeing this Sukhpal went running to his hut and informed the members of his family that the she-buffaloes were being taken to the pound. On hearing this nine persons including the five appellants arrived on the scene armed with lathis and spears and wanted to rescue the cattle. Charni and his nephews resisted the rescue of the cattle and the accused persons on this started beating Charni and his nephews, On an alarm being raised, a number of villagers arrived on the spot and the accused then left the place. As a result of the beating that were received Charni and one of the nephews, namely, Rupa became unconscious. Subsequently they were both put on a bullock-cart and taken to the police station by Mukhtar, the other nephew of Charni. While they were on their way, Charni died but Rupa subsequently recovered. A first Information report of the occurrence was lodged in the police station the same day at 1.10 P. M. and the police station is at a distance of about four miles from village Lachhoi. All the facts given above are narrated in this report and all the nine assailants are also named therein. It cannot be said that there was any delay made in lodging the report because it must have taken some time to arrange for the bullock-cart and then to have travelled a distance of four miles along with the injured persons who were lying on the cart. A period of less than four hours therefore cannot, by any means, be said to be an unduly long period. All the nine persons mentioned in the report were sent up for trial under the Sections mentioned above. The learned Sessions Judge acquitted four of the accused persons, viz. Govinda, Balla, Jodha, Sheoraj and convicted the five appellants and sentenced them as mentioned above.

3. The defence of Amar Singh appellant was that Hansraj appellant had taken the produce of a grove from Babu zamindar in the year in question. Charni and others did not like this and at 5.30 P. M. on the date of the occurrence while Amar Singh was cutting rizka grass in his field, he heard a noise and went to the mango grove. He found two baskets full of mangoes kept there and some mangoes lying

about. Hansraj asked Charni and his companions not to pluck mangoes at which they abused Hansraj. They then attacked Amar Singh and Hansraj, and it was In self-defence that Amar Singh and Hansraj also took up the lathis, which the accused had put on the ground while plucking the mangoes, and tried to defend themselves. Practically to the same effect is the defence of Hansa also.

He merely added that the grove previously formed part of the ancestral holding of Charni and others but the zamindars had dispossessed them from this holding. They therefore did not like the idea of Hansa having purchased the mangoes from the zamindar. They consequently came in the evening and started cutting mangoes and when Hansa asked them not to do so they started beating Hansa and Amar Singh who had reached the place meanwhile. Hansa and Amar Singh also plied their lathis in their self-defence. Hansa also stated that he went to make the report at the police station but the police did not record his report but arrested him instead.

The defence of the other accused was that they had been falsely implicated and were not present at the scene of occurrence. The accused then set up a right of private defence of their person and property and shifted the scene to the mango grove. Besides this plea of self-defence another plea of self-defence also has been taken before me and that is based on the statement of P. W. Murad. In cross-examination this witness stated that Sukhpal was grazing the she-buffaloes in the grove. Then Mukhtar asked Sukhpal to take out the she-buffaloes from the sugar cane field. On this Sukhpal drove them from the field to the grove and Charni, Mukhtar and Rupa then drove the she-buffaloes from the grove.

It has been argued that this statement shows that Charni and others had not seized the cattle while they were in their sugar cane field, but tried to take them to the cattle pound from the grove after the she-buffaloes had left the field and had gone to the grove. Charni had a right to seize the cattle only while they were trespassing their field but had no right to seize them after they had been removed to the mango grove and the appellants had every right to rescue their cattle which had been improperly seized. I shall consider both these points after dealing with the prosecution evidence on the record.

4. I might now refer to the nature of the Injuries received by the parties in this incident. As already stated, Charm died on the way from the village to the police station in the evening of the 3lst of May, 1950. His post mortem examination was held on the 1st of June 1950 at 10-30 A.M. and the medical oSicer noticed four injuries on his person. Injuries Nos. 1 and 2 were two contusions on the front part of the head towards the right. Injury No. 3 was an abrasion on the left half of forehead. Injury No. 4 was an incised wound on the back of right calf. According to the Civil Surgeon death was due to the shock of the injuries i.e. fracture of the skull bones and compression of the brain.

A private medical practitioner of Jahangirabad examined Rupram on the 1st of June 1950 at 8 in the morning and found two injuries on his person, one was a lacerated wound on the left side of the head and the other was a swelling on the back of the right palm. Both injuries had been caused with some blunt weapon like a lathi and at the time of the examination Rupram was not able to speak. As far as medical evidence goes, only Charni and Rupram were injured, Charni received four injuries and Rupram two. There is oral evidence that Mukhtar Singh also received injuries, but no medical evidence has been produced to prove Mukhtar Sirigh's injuries. The injuries on the persons of the

accused appear to be many in number though none was so serious as the first two head injuries caused to Charni. The medical officer Bulandshahr jail examined the appellants when they were admitted to jail. He examined them on the 1st of June, 1950 at about six in the evening.

On the person of Hansa appellant he noticed six injuries, three of which were contusions, two abrasions and one a swelling. One of the injuries was on the head of Hansa, one on the forehead, two abrasions above the left eye-brow and the left temple, one in the right leg and one in the thumb. Amar Singh appellant had seven injuries, two of which were on the head, one above the eye-brow, one on the left thumb, one on the right elbow, one on the right wrist and one on the shoulder blade. All the injuries of these appellants were simple. Out of the appellants, Hansa and Amar Singh were the only two who received injuries and they received altogether 13 injuries.

5. In order to prove the prosecution case, the prosecution has produced nine eye-witnesses. (His Lordship reviewed the prosecution evidence and continued).

6. Coming to the case of the five appellants, Hansa and Amar Singh had admittedly taken part in the fight and the other three appellants had been named by all the prosecution witnesses as having joined in the beating given to Charni and Roopa. The statements of Ganeshi, Sher Singh and Kanchan fully prove the presence of these accused also on the scene of occurrence and also the fact that these three appellants had also joined in giving the beating to Charni and Roopa. The appellants, therefore, would be clearly guilty of the commission of the offence unless there is a reasonable ground to believe that they might have acted in the exercise of their right of private defence.

The defence story that the fight took place over the plucking of mangoes in the grove is not supported by anything in the cross-examinations of the prosecution witnesses and they have all denied that there was any quarrel over the plucking of the mangoes. The defence, however, have produced one witness, namely, Narpat D. W. 2 who has deposed to this fact, but this witness does not appear to be reliable. The witness admits that he has no field towards the side of the grove and he was getting Kekar tree cut from the field of his brother. He was having it cut for his brother. The learned Sessions Judge has not relied on his statement and I agree with him that the statement of his witness is not worthy of belief.

It further appear that no blood was noticed in the sugarcane field, but the investigating officer found blood in the field of Mahesh Mahendra Gir where, according to the prosecution, the fight took place after the cattle had been driven from the sugarcane field of Charni. The presence of blood on this field entirely negatives the defence story.

I, therefore, hold that the fight did not take place in the mango grove over the plucking of the mango but it took place because Charni and others were taking the cattle to the pound which had grazed in the sugarcane field and the appellants and others forcibly rescued their cattle after beating Charni and Roopa.

7. The next argument of self-defence is based on the statement of Murad Singh, P. W. 6, who stated as follows:

> "Sukhpal was grazing the she-buffaloes first in the grove. Mukhtar had asked Sukhpal to turn out the she-buffaloes from the sugar cane. On this Sukhpal had driven them to the grove.
>
> Charni, Mukhtar and Roopa then drove out the she-buffaloes from the grove."

Some of the other witnesses produced on behalf of the prosecution were also put this question, but they denied the fact that Sukhpal had driven the cattle from the sugar cane field, and it is this witness alone who has supported this story.

The learned Sessions Judge has disbelieved this statement on the ground that he had made it in order to help the appellants, but he has given no good reasons in support of his view. It may be that the witness is not telling the truth, taut at the same time Murad Singh is a prosecution witness, and he has stated against the appellants that they had taken part in the beating of Charni and Roopa. I am not, therefore, prepared to hold that this statement is false. Even if there is a possibility of its being true, the accused should have the benefit of that doubt. I shall, therefore, proceed to decide the case, as if this part of Murad Singh's statement is true.

8. The argument of the learned counsel is that the cattle having left the field and gone on to the grove, which was in the possession of the appellants, Charni and others had no more right left to take the cattle to the pound. After hearing the learned counsel, I think this broad proposition cannot be supported as far as the law in India is concerned.

9. Under the English law the position appears to be clear that the cattle could be seized only while they were actually trespassing and not afterwards. The point is discussed in Salmond's Law of Torts, Tenth Edition, page 197, under the heading "Distress Damage Peasant". But in my opinion the codified law in India is slightly different and gives the right of seizure even though the cattle have in the meantime left the field of the accused, provided " notice of trespass was taken immediately and the complainant was pursuing the cattle in order to take them to the pound.

Section 10 of the Cattle Trespass Act gives a cultivator or occupier of any land a right to seize any cattle "trespassing on such land and doing damage thereto" and to take them to the cattle pound. The right given here is to seize the cattle trespassing on his land and doing damage thereto, but it is not confined to the period when the trespass was continuing. There is no reason to limit the right of seizure to the time of the actual trespass, and it appears to be somewhat unreasonable that if a person sees cattle grazing on his field and attempts to capture them but the cattle escape from the field before he is able to bring them under control he should lose his right of taking them to the pound.

This view is supported by a decision of Lahore High Court in -- 'Waryami v. Emperor', AIR 1928 Lah 692 (A) and also by the decision of Nagpur Judicial Commissioner's Court, -- 'Jagannath Singh v.

Emperor', AIR 1934 Nag 258 (B). It has been held in these cases that the right of capture of the cattle does not extend to following them to their sheds and seizing them there; but if the owner of a field attempts to seize them while actually trespassing, he is within his rights in capturing them before they have definitely made their escape from the spot, even though they were not actually inside the field when captured. A previous Nagpur case -- 'Bhagwant Rao v. Champat Rao', AIR 1925 Nag 50 (C) was distinguished on the ground that in that case no notice of the trespass was taken at the time and it was only afterwards that the owner went to the cattle shed and attempted to take them from there.

The last case brought to my notice is the case of -- 'Jiwana v. Emperor', AIR 1947 Lah 380 (D). In this case the cattle were captured after they had traversed a large distance from the damaged field and had reached the land belonging to their owners and were within a very short distance of their sheds. On these facts it was held that the owner of the field had no right to seize the cattle. The learned Judges observed as follows:

> "In order to cover the act of the owner or occupier of a field who pursues a trespassing animal and captures it outside the field which has been damaged, the words "cattle trespassing on such land" have to be given an extended meaning and such an extension must be confined within reasonable limits. I do not think that the words can be stretched to cover the circumstances of the present case. At the most, the act of seizure may be within Section 10, Cattle Trespass Act, if it is effected at a spot within easy reach of the field damaged, but in this case the distance is very great, and moreover the cattle had already come not merely constructively but actually within their owner's possession."

This case also does not help the defence much because, in the present case, even if Murad's statement is true, the cattle had just gone to the adjoining place, i.e., the grove, close to the sugarcane field. Charni and Roopa actually saw the trespass and damage and wanted to seize the cattle and they followed them to the mango grove which was close by. The cattle had not traversed any large distance and the right of seizure, in my opinion, had not come to an end. The appellants had, therefore, no right to forcibly rescue the cattle and cause injuries to Charni and Roopa who resisted the rescue.

10. It was then urged that the statement of Murad shows that the custody of the cattle had vested in the appellants before they were driven by them from the grove, and Mukhtar at least had submitted to this transfer of custody before he and others decided ultimately to take the cattle to the pound. This further inference drawn by the learned counsel does not, however, appear to be correct. It may be that when Mukhtar saw, along with Charni and Roopa, that the cattle were grazing in their field, he asked Sukhpal to take them away, but at the same time it cannot be inferred from this statement that these three had not immediately followed the cattle with the intention of taking them to the pound.

After a careful reading of the entire prosecution evidence, I have come to the conclusion that, even though Mukhtar may have asked Sukhpal to take away the cattle, he and Roopa had immediately

decided, on seeing the cattle in their field, to take them to the pound, and all the three of them immediately went after the cattle and drove them to the cattle pound. Even if the cattle had reached the grove, these three had followed them from the sugarcane field on to the grove and then taken them to the pound. It. cannot be said in this case that, after having taken notice of the trespass, they had at any time given up the idea of taking the cattle to the pound or had even delayed their action in the matter. As soon as these three saw that the cattle had grazed the sugarcane crop, they decided to take them to the pound, even though a remonstrance may have been made to Sukhpal and Sukhpal may have removed them to the adjoining grove.

But the sight of the cattle in the field, the remonstrance and the following of the cattle were all one connected action, and at no stage it can be said that Charni and others had submitted to the trespass or omitted to take notice of it. In view of the facts given above, I am of the opinion that Charni, Roopa and Mukhtar had a right to take the cattle to the pound, and the rescue of the cattle by the appellants was wholly unjustified and illegal. They were, therefore, rightly convicted of the commission of the offences under Sections 148, 304 and 323, I.P.C.

11. As regards the sentence, however, the case has to be decided on the assumption that the cattle were taken away from the grove, which was in the occupation of the appellants, and the appellants then tried to rescue the cattle. Further, the appellants' party received greater number of injuries than the complainants'. The sentence, therefore, passed against them under Sections 304/149, I. P. C. appears to be too severe. I, therefore, reduce the sentence passed against them under Sections 304/149, I. P. C. from five year's R. I. to two years' R. I. each, though their convictions under Sections 148, 304 and 323, I.P.C. are maintained. The sentences passed against them under Sections 148 and 323, I.P.C. are also maintained. But all the sentences passed under the three sections will run concurrently.

12. All the appellants are on bail. They shall surrender and serve out the rest of the sentences passed upon them.