Chandra Bhan And Ors. vs State on 3 June, 1953

Equivalent citations: AIR1954ALL39, AIR 1954 ALLAHABAD 39

JUDGMENT

Asthana, J.

1. The appellants have been convicted under Section 147 and Section 302 read with Section 149, I. P. C. by the Sessions Judge of Agra for committing riot on 28-7-1950 at about 8.30 in the morning in plot No. 62 of village Bachhgaiya police station Jaitpur district Agra and for beating Phooljari and Gangadin during the commission of the riot as a result of which Phooljari died on the spot and Gangadin on 2-8-1950 in Bah hospital, where he was removed after the occurrence. They have each been sentenced to two years' rigorous imprisonment under Section 147, I. P. C. and to transportation for life under Section 302, read with Section 149, I. P. C. Both the sentences have been made concurrent.

2. It appears that Phooljari, Gangadin and their brother Sheo Dayal had brought a suit for ejectment in respect of the plot No. 62 under Section 180, U. P. Tenancy Act against Chhotey accused which was decreed in their favour after a protracted litigation lasting for over four years. They obtained possession over the plot on 21-9-1949. As the delivery of possession had been stayed by a general order of the Board of Revenue issued on 15-9-1949 the delivery of possession which had been given to Phooljari and others was wrong and so possession was redelivered to Chhotey.

After the stay order had been withdrawn, Phooljari and others again applied for delivery of possession to the revenue court and it was delivered to them by the court on 8-6-1950; thereafter, on the day of occurrence when Phooljari and Gangadin were cultivating the disputed plot, the appellants along with two others, namely Chhote and Ram Sahai, who have been acquitted by the lower court, came there armed with lathis and three ploughs and began to plough the same field from another corner and asked Gangadin and Phooljari to stop ploughing and on their refusal to do so they started beating them with lathis as a result of which both were severely injured and Phooljari died on the spot and Gangadin in the hospital.

3. The report of the occurrence was dictated by Gangadin to Pota chaukidar of Nagla Brij who reached the place of occurrence after a short time and Pota chaukidar took the report to police station Jaitpur which is three miles to the north of the place of occurrence and handed it over there the same day at 12.30 in the afternoon. All the accused except Ram Sahai are named in this report.

After the report, the police went to the place of occurrence and there found the dead body of Phooljari, and Gangadin severely injured. An inquest report of the dead body was prepared by the police and, therefore was sent for postmortem examination. Gangadin was sent to Bah hospital for

examination and treatment.

4. The defence of all the accused except Chandrabhan and Khudda was that they had been falsely implicated on account of enmity. They denied their presence on the spot or that they had taken any part in the alleged occurrence. The defence of Chandrabhan was that he was cuiltvating the plot in dispute from several days before, that Gangadin came there & asked them to stop ploughing and when they refused they both beat him and in his self-defence he also beat them. The defence of Khudda is also to the same effect.

5. The post-mortem examination on the dead body of Phooljari was performed by Dr. B. L. Gupta, Civil Surgeon, Etawah on 30-7-1950 and the post-mortem report Ex. P7, which has been proved by him shows that Phooljari had eleven injuries on his person, three of which were contused wounds, seven were contusions and one was an abraded contusion, that his age was 45 years and that he had a well developed body, that the injuries on his person were 'ante-mortem' and were two days old and had been caused by some blunt weapon like a lathi. It further shows that his death, was due to fracture of vault and base of the skull bones caused by the injuries on the head.

6.Gangadin was first examined on the 28th July at 3.45 p. m. in Bah dispensary by Dr. Madan Mohan Misra, Medical Officer in charge of that dispensary and at the time of his examination he had the following injuries on his person:

1. Contused wound 1/2" x 1/4"x1/4" on the dorsum of the left hand.

2. Bruise 1"x1" just above the left waist joint.

3. Abrasion 3"x 1/2" on the post surface right forearm.

4. Contused wound 1/2"x1/4"x1/4" on the out surface right thigh.

5. Bruise 3 1/2"x1 1/2" on the right side of the back.

6. Contused wound 1"x1/2"x1/4 on the scapula region left side of the head.

7. Contused wound 1"x 1/4"x 1/4" on the front of the head on the left side.

8. Contused wound 1"x1/4"x1/4" on the middle of the head.

9. Contused wound 1"x1/4"x1/4", middle of the head on the right side.

10. 1 1/4"x 1/4"x 1/4" contused wound on the right side of the forehead.

11. Contused wound 3/4"x1/4"x1/4" on the right side of the head.

12. Contused wound 1 1/4"x 1/4"x1/4" on the right side of the head.

The post mortem examination which was performed on 3-8-1950 shows that he had fifteen injuries on his person which included one incised wound 4"x 1/2"x muscle deep on the back of the right forearm and one punctured wound 1/2"x1/2"x bone deep on the back of the left hand near the right index finger with fracture of the second metacarpal bone. Three of the injuries, Nos. 5, 6 and 7 noted in the post mortem examination report are not decipherable because the paper at that place was mutilated. The post mortem report, Ex. P4, further shows that out of these fifteen injuries seven were contused wounds, one was an abrasion and two were contusions.

7. It was contended on behalf of the appellants that there was a difference in the number and nature of the injuries of Gangadin in the injury report Ex. P1 and in the post mortem examination report Ex. P4. There is no doubt that in the injury report Ex. P1 there is no mention of any incised wound or punctured wound on the person of Gangadin when he was examined on 28-7-1950, whereas in the post mortem examination there is a mention of such wounds. It appears to us that this difference is either due to the fact that the doctor who examined Gangadin on 23-7-1950 did not properly examine him or he failed to notice the incised and punctured wounds found at the time of the postmortem examination. There is otherwise no satisfactory explanation how at the time of the post-mortem examination these two injuries were found.

We are not prepared to accept the suggestion on behalf of the appellants that these injuries were self inflicted in order to aggravate the offence, nor we are prepared to accept that these injuries were inflicted on him while he was in Bah hospital. It would appear from the post-mortem report of Phooljari and Gangadin that the total number of injuries found on their persons were twenty-six in all, eleven on Phooljari and fifteen on Gangadin. It was argued on behalf of the appellants that Chandrabhan Khudda and Chhotey also received some injuries. There is, however, nothing on the record to show that these three persons were medically examined, nor their injury reports are on the record. There is no doubt that P. Ws. Sheodayal and Kedari mukhia in their statements stated that they had noticed some minor injuries on the person of Chandrabhan and Chhotey. Besides these two witnesses the defence witness Paras Ram (D. W. 3) also stated that Chandrabhan got one injury on the wrist and Khudda two injuries, one on his back and one on his thigh.

8. The question for consideration is, which of the party was the aggressor. On behalf of the appellants it was argued that Chandrabhan and Khudda were ploughing the disputed plot from before when Phooljari and Gangadin came there and asked them to stop ploughing the field and when they refused they beat them with lathis. It has not been suggested on behalf of the appellants that besides Chandrabhan and Khudda there was any other person who took part in the fight on their side.

It appears from the evidence on the record that Chandrabhan is about 74 years old and Khudda is a boy of about 16 years. It further appears from the evidence on the record that Phooljari deceased was 45 years old and was a man of robust constitution and Gangadin was 55 years old. It appears to us very improbable that Chandrabhan and Khudda could have inflicted so many injuries on Phooljari and Gangadin and themselves escaped with very minor injuries. If Phooljari and Gangadin had gone to the field with the determination that they would cultivate it by force and if any resistance was offered to them by Chandrabhan, Chhotey and others they would beat them, it is very

unlikely that they would not have taken others with them for their help.

It also appears somewhat unlikely that if these two persons were the aggressors they themselves would have received so many injuries. From the number and the nature of the injuries on the person of Gangadin and Phooljari there can be no doubt that they were not assaulted only by Chandrabhan and Khudda but by other persons also. It appears that after obtaining possession over the plot in dispute in June 1950 these persons were at first afraid to go to the field to cultivate it, but at last they decided to cultivate it and the result was that they were beaten by the other side and their apprehensions were justified. We are not satisfied that Phooljari and Gangadin were the aggressors and first beat Chandrabhan and Khudda. On the contrary, we are of opinion that these persons were cultivating their field and Chandrabhan and others asked them to stop ploughing and when they did not stop ploughing it they were beaten by Chandrabhan and his companions and it was in their self defence that they too managed to inflict one or two minor injuries on the assailants who outnumbered them.

9. It was argued on behalf of the appellants that Chandrabhan and others were not actually ejected from the plot in question and that they had been cultivating it from before in their 'bona fide' right and as Phooljari and Gangadin wanted to dispossess them forcibly from it they were justified in defending their property and also their person and therefore they did not commit any offence even if they beat Phooljari and Gangadin which resulted in their death.

From the evidence of Sri Narain Sarup Amin who was examined as a court witness, it is clearly proved that actual possession over the disputed plot was delivered to Phooljari and Sheodayal against Chhotey accused on 8-6-1950 on the spot and that proclamation of it was made by beat of drums. He also proved the 'dakhalnama' Ex. P15. According to the prosecution evidence the dakhalnama was signed by the accused Shri Dayal, though Shri Dayal, in his statement, denied his signature on it.

10. On behalf of the appellants it was argued that there was nothing on the record to show that the Amin had given any notice to the judgment-debtors before the delivery of possession or that they had knowledge of it. It was contended that according to Rule 104 framed by the Board of Revenue under the U. P. Tenancy Act for the guidance of the amin it is necessary that such notices should have been sent. The Amin was not questioned on this point and it is therefore not known whether such notices were sent or not.

But even if such notices were not sent that would not invalidate the delivery of possession made by the Amin. The rules framed under Section 104 are merely for the guidance of the Amin and are not mandatory provisions the omission of which would invalidate the delivery of possession effected by the Amin in accordance with the provisions of the Code of Civil Procedure. We are, therefore, of opinion that from the evidence of the Amin, Sri Narain Sarup, it has been satisfactorily proved that actual possession was delivered to Gangadin and Sheodayal over the plot in dispute on 8-6-1950 in execution of the decree for ejectment against Chhotey accused.

The other accused, Chandrabhan and Shri Dayal are related to Chhotey accused. We do not think that after the decree for ejectment and the consequent delivery of possession the accused Chhotey, Chandrabhan or Shri Dayal had any right to the plot in dispute. They have not produced any evidence to show that after the decree for ejectment or after the 'dakhalnama' any new right was conferred on them by Gangadin or Sheodayal. In the absence of any such evidence, they were mere trespassers and as such they had no right to cultivate the plot in dispute, and, if they wrongly cultivated it and, when the rightful owners, namely, Gangadin and Phooljari, went to cultivate it they had no right to stop them from doing so. In our opinion no question of right of defence of property arose in their favour. Such a right arises only in the case of rightful owners and not in the case of trespassers, particularly against the rightful owners.

11. There is no doubt that if the appellants had wrongfully taken possession over the plot in dispute even after their ejectment, Phooljari and Gangadin had no right to take the law into their own hands and beat them, and-if they actually beat them first and the accused beat them in self-defence then it can be said that they had some right. But in view of our finding above that Chandrabhan 3nd others beat Phooljari and Gangadin when they did not stop ploughing at their request, no question of the right of self-defence arises in their favour.

12. The right of private defence only arises against acts which constitute an offence except in certain specified circumstances. The right of private defence of person extends to acts which amount to an offence affecting the body of the person exercising the right or the body of any other person. The right of private defence of property covers cases of acts which are offences falling under the definitions of 'theft', 'robbery', 'mischief' or 'criminal trespass' or an attempt to commit any of these.

13. As far as the right of private defence of person is concerned, the evidence for the prosecution is, as stated above, that the accused beat Phooljari and Gangadin when the latter did not stop ploughing at the request of the accused. In view of the large number of accused persons, and the presence of only Phooljari and Gangadin on the other side, it is wholly improbable that Phooljari and Gangadin would think of striking the members of the party of the accused. The number of injuries supports the prosecution theory, inasmuch as 21 injuries were inflicted, on Phooljari and Gangadin, whereas the injuries inflicted on the persons of two of the accused were merely nominal. In this state of facts and circumstances, the case of private defence of person argued by the learned counsel for the appellants has no substance.

14. As regards the private defence of property, the position, as we have already stated, is that the act of Phooljari and Gangadin should amount to an offence before the accused could have any right of private defence against such an act. Phooljari and Gangadin had obtained possession through court on 3-6-1950, and, if on 28-7-1950, they went to plough their field, it could not be said that they were committing any offence. The learned counsel for the appellants has urged that one of the prosecution witnesses has admitted that Chandrabhan appellant and his son Chhotey Lal had cultivated the field about four days before the occurrence.

We are not inclined to believe this statement, because Phooljari and Gangadin, having taken possession immediately through court, are not likely to have submitted to this ploughing of the land

by Chandrabhan and Chhotey Lal. Further, the statement of the Sub-Inspector of police shows that the whole field had not been ploughed up, but only a small portion of it had been ploughed. The correct fact appears to be that the party of the accused for the first time decided to plough up the field on the date of the occurrence, and there was resistance on the part of Phooljari and Gangadin, which led to their being given a serious beating causing the death of both of them.

15. Under the circumstances, the accused had no right of private defence of property either. Assuming, that they had cultivated the land four days earlier, and Phooljari and Gangadin tried to cultivate it on the date of the occurrence, Phooljari and Gangadin were acting 'bona fide' in the exercise of their right, and were not committing any offence of criminal trespass, even if the possession of the land on that date was with Chandrabhan appellant. In order to make out an offence of criminal trespass, it has to be proved that the trespass was made with intent to intimidate, insult or annoy. No such intention could be presumed in the case of Phooljari and Gangadin, because their entry was clearly in the 'bona fide' exercise of their right. See -- 'Supdt. and Remembrancer of Legal Affairs, Bengal v. Bhagirath Mahato', AIR 1934 Cal 610 (A).

16. Learned counsel for the appellant have relied on -- 'Rex v. Horam', AIR 1949 All 564 (B), in support of their contention that even if they were trespassers they had a right of self-defence. In our opinion this has no application to the facts of the present case. In that case the trespassers had cultivated the land in spite of a decree for ejectment against them and the decree-holder instead of filing a suit for ejectment against them or taking other legal proceedings used force against them and beat them in order to dispossess them. This is not the case here.

17. It has further been argued that from the evidence of Kedari and Ram Din it appeared that the accused Chandrabhan and others had been cultivating the plot in dispute from four days before and on the day in question also they had been cultivating it from before and Phooljari and Gangadin came afterwards. There is no doubt that the evidence of these two witnesses is to that effect. The evidence of Ram Din that Chandrabhan and others had been cultivating the plot in dispute from before on the day of occurrence cannot be accepted in view of his statement that he reached the spot when the accused were beating Phooljari and Gangadin with lathis and that he did not know how the fight started.

It appears somewhat improbable that Chandrabhan and Khudda had been cultivating the field in dispute from before on the day of occurrence and that Phooljari and Gangadin came afterwards. If this is correct then there is no explanation about the number of injuries on the person of Phooljari and Gangadin. We have already said above that Chandrabhan and Khudda could not have inflicted all those injuries on them and that there were many other persons with them. This indicates that Phooljari and Gangadin were cultivating the plot on the day of occurrence when Chandrabhan with his party reached there and assaulted them and this alone explains the number of injuries on Phooljari and Gangadin. Even if it is accepted that Chandrabhan and Khudda had been cultivating the disputed plot on the day of occurrence from before and Phooliari and Gangadin went there after them and started ploughing it from the other side when they were beaten by Chandrabhan and others, that does not in any way affect the liability of Chandrabhan and his companions. They had no right to stop Phooljari and Gangadin who were the rightful owners from cultivating the plot and

to beat them when they did not comply with their demand.

17a. The question which is now left for consideration is which of the appellants took part in the beating. As regards Chandrabhan and Khudda, there is no doubt that they were present on the scene of occurrence. They admitted this fact. As regards Murli and Reoti who are closely related to Khudda it has been stated that they have been falsely implicated on account of their relationship with Khudda. There is no doubt that they are closely related to him. Murli is the father of Khudda and Reoti his brother.

It has been argued that they may have been falsely implicated on account of the relationship though at the same time there is also the possibility that they may have taken part in the fight with Khudda. They are both named in the first information report which was made shortly after the occurrence. They have been named by P. Ws. Banwari, Sheo Dayal, Kedari mukhia and Ram Din. It has been argued on their behalf that the evidence of Banwari and Sheodayal was not reliable as they were related to the deceased. We do not think that merely because they were related to them their evidence should be discarded. Nothing has been brought out in their cross examination as to why they would falsely implicate these two accused. There is also no reason why Kedari mukhia and Ram Din have named them. It has not been alleged that there was any enmity against these two appellants. We are, therefore, of opinion that there is sufficient evidence against them and that they took part in the beating.

18. On behalf of Bhola accused it was argued that he bad been implicated because he made the proclamation at the time of the re-delivery of possession to Chandrabhan and that Bansia who is his cousin has also been implicated because of his relationship with Bhola. There is no doubt that on the evidence on the record it is proved that Bhola made the proclamation when possession was re-delivered to Chandrabhan. We do not think that he was implicated in this case simply because he had made the proclamation on the occasion of the re-delivery of possession to Chandrabhan. Moreover, if the complainant had any grievance against Bhola because he made the proclamation under the orders of the Amin at the time of re-delivery of possession, there does not appear any satisfactory reason why Bansia who is his distant cousin should have been implicated. There was no direct motive for the complainant and the prosecution witnesses to implicate him.

It was argued on behalf of Bansia that the accused Chhotey had been acquitted by the lower court because he was not named at first by Ram Din (P. W.) in his statement before it and that his name was mentioned only at the suggestion of the counsel for the prosecution, and when Chhote was acquitted on this ground, Bansia too should have been acquitted as he too was named by Ram Din before the lower court after his name was suggested by the counsel for the prosecution. It appears from an examination of the statement of Ram Din made before the lower court that he at first forgot to name Chhote and Bansia before the lower court and when he was reminded of his statement in the committing court, where he had named these persons along with the other accused, that he said that they too were present and took part in the occurrence. It cannot be said that Chhote and Bansia had been implicated in the case subsequently, because their names were mentioned at the earliest opportunity in the first information report and also in the court of the committing Magistrate.

It appears that while giving the names of the accused Ham Din forgot the names of Chhote and Bansia and when he was definitely asked whether they were also among the assailants or not, then he mentioned their names. We do not think that merely because Ram Din forgot to mention their names in the first instance in the lower court it is proved that they were not there. So far as Chhote is concerned, he is a close relation of Chandrabhan and it was he against whom the suit for ejectment had been decreed and possession had been obtained, We do not think that the reasoning given by the lower court for the acquittal of Chhote is correct.

In the circumstances, we are of opinion that merely because Ram Din forgot to mention the name of Bansia at the first instance in his statement before the lower court though he had mentioned his name in the committing court and though he was mentioned in the first information report and in the dying declaration, Ex. P8, made by Gangadin, is no sufficient reason for his acquittal.

19. About the appellant Shri Dayal, it has been argued that P. W. Banwari in his cross-examination said that he stated in the committing court that this accused was among the persons who first assaulted Phooljari and Gangadin. But his statement before the committing court discloses that he had not made this statement there. It appears from a perusal of his statement before the committing court that he had mentioned the name of Shri Dayal accused among the persons who were present at the time of the occurrence and took part in it.

It is possible that he should not have been one of the accused who first assaulted Phooljari and Gangadin and may have joined them later on. This accused is of the family of Chandrabhan. He too is named in the first information report and in the dying declaration of Ganga Din. It appears improbable that he has been falsely implicated though he was not present at the spot. It was argued on his behalf that his case was parallel to that of Ram Sahai accused who has been given the benefit of doubt and acquitted. In our opinion this contention is not correct. Ram Sahai accused was not named in the first information report and it was merely on account of this reason that he was given the benefit of doubt. In our opinion, there does not appear any satisfactory reason to disbelieve the prosecution evidence against him. We are, however, of opinion that he was present at the place of occurrence and took part in it.

20. In view of what has been said above, we are satisfied that the appellants formed an unlawful assembly with the common object of beating Phooljari and Gangadin when they did not stop ploughing the field in question on their demand and beat them which caused their death. They have, therefore, been rightly convicted under Section 147 and Section 302 read with Section 149, I. P. C. The appeal is dismissed.

21. As the appellant Chandrabhan is on bail he shall surrender to it and serve out his sentence.

22. Leave to appeal is refused.