Supreme Court of India
State Of Assam vs Bhelu Sheikh And Ors. on 8 March, 1989
Equivalent citations: AIR 1989 SC 1097, 1989 CriLJ 879, 1989 (1) Crimes 689 SC, 1989 (1) SCALE 554, 1989 Supp (2) SCC 1
Author: Natarajan
Bench: A Ahmadi, S Natarajan
JUDGMENT Natarajan, J.

1. This appeal by special leave by the State of Assam is directed against the judgment of the Gauhati High Court allowing the appeal filed by the respondents herein and setting aside their convictions by the Sessions Judge under Section 302 read with Section 149 I.P.C. and Section 304 read with Section 149 I.P.C. and the sentences awarded therefor.

2. The respondents came to be convicted by the Sessions Judge for having caused the death of one Majibur Rahman and his father Dhansa Sheikh in the following circumstances. On 2-11-70, Dhansa Sheikh (father) and Majibur Rahman (son) were harvesting the paddy crop in a paddy field at village Katabari. At about 9.00 a.m. the respondents along with 20 or 30 others went to the paddy field in question and attacked Dhansa Sheikh and Majibur Rahman with weapons such as daggers lathis etc. Majibur Rahman died at the scene itself within a short time after the attack. However Dhansa Sheikh survived for some days and died at the hospital on 11.11.1970 inspite of treatment being given to him. After the incident had taken place, the family members and some of the villagers took Dhansa Sheikh and the dead body of Majibur Rahman to the house of Dhansa Sheikh.

3. In the afternoon Shri Tarini Hazarika, the Sub Inspector of Police of Gauhati Police Station came to the village to investigate a case registered against Dhansa Sheikh and Majibur Rahman on a report made at 12.45 p.m. at the police station by respondent No. 2 Mahinuddin. The said report has been marked as Ex-A and therein Mahinuddin has stated that Dhansa Sheikh and Majibur Rahman had trespassed into the paddy field belonging to his nephew minor Thakur All and attacked respondent No. 1 Bhelu Sheikh and respondent No. 3 Naram Ali and caused injuries to them. When the Sub Inspector of Police reached house of Dhansa Sheikh, he found Dhansa Sheikh lying injured and Majibur Rahman lying dead in the house. He therefore, recorded a statement Ex. 7 from Dhansa Sheikh and after returning to the police station, he registered a case against the respondents under Sections 147/302/326/149 IPC. Dhansa Sheikh was sent to the hospital for treatment and Majibur Rahman's dead body was also sent to the hospital for post-mortem examination. PW-1 Dr. Bhattacharjee found two lacerated injuries on the scalp and one abrasion above the right eyebrow of Majibur Rahman. Beneath the lacerated injuries, there was depressed fracture of both the parietal bones. The doctor certified that the death of Majibur Rahman was on account of shock and haemorrhage resulting from the injuries sustained by him. Dhansa Sheikh was given treatment at the hospital but inspite of it he died on 11.11.70. The autopsy on his dead body also was conducted by PW-1 Dr. Bhattacharjee. The autopsy revealed that Dhansa Sheikh had sustained fracture of the parietal bones besides fracture of the right clavicle. As in the case of Majibur Raman, Dhansa Sheikh's death was also attributed to shock and hemorrhage resulting from the fracture injuries sustained.

4. After investigation was completed, the investigation officer referred the case registered on the report of the second respondent Mahinuddin and laid chargesheet against the respondents in the case registered on the report given by Dhansa Sheikh.

5. While a charge under Section 302 read with Section 149 IPC was framed against the respondents for causing the death of Majibur Rahman, a charge under Section 204 read with Section 149 IPC only was framed against them for causing the death of Dhansa Sheikh presumably because he had survived for about nine days after sustaining injuries.

6. To prove the case against the respondent, the prosecution examined 14 witnesses. Among them PW-6 Imon Nessa, PW-7 Rajat Ali and PW-13 Gauri Kanta Bora were examined to speak about the paddy field where the occurrence had taken place being in the possession of Dhansa Sheikh. PW-8 Safurannessa, PW-9 Ragia Begum and PW-10 Subrat Ali are respectively the wife, daughter and son of Dhansa Sheikh and they were examined to speak about the attack on Dhansa Sheikh and Majibur Rahman by the respondents and also about the land being in the possession of Dhansa Sheikh. The other witnesses were official witnesses and formal witnesses to speak about the investigation of the case and the doctors who gave treatment to Dhansa Sheikh and did the post mortem examination on the dead bodies of the two victims. The respondents did not examine any defence witnesses but setforth their defence by marking take report Ex.A given by the second respondent to the police authorities.

7. The Sessions judge accepted the prosecution case and held that the paddy field was in the possession of Dhansa Sheikh and that the respondents had formed themselves into an unlawful assembly and committed rioting and attacked Majibur Rahman and Dhansa Sheikh in prosecution of their common object and accordingly he convicted them under Sections 302 and 304 IPC both read with Section 149 IPC and awarded them life imprisonment as well as R.I. for 5 years and directed the sentences to run concurrently. Besides the respondents were sentenced to pay a fine of Rs. 500/- and Rs, 1000/- respectively for the said two convictions.

8. On the respondents preferring an appeal, the High Court allowed the same and set aside their convictions and acquitted them of both the charges. The High Court has held that the evidence did not establish that Dhansa Sheikh and Majibur Rahmah were in possession of the paddy field or that the respondents had formed themselves into an unlawful assembly with the common object of dispossessing Dhansa Sheikh and Majibur Rahman from the paddy field and had attacked them in order to dispossess them. The High Court has held that PW-8 to PW-10 could not have witnessed the occurrence and furthermore the presence of injuries on two of the respondents would suggest that the respondents may have caused injuries to Dhansa Sheikh and Majibur Raman in the exercise of their right of defence of person and property. The High Court has taken the view that though the report Ex. 7 given by Dhansa Sheikh, would amount to a dying declaration in law, it was not worthy of acceptance because the investigating officer had failed to get the statement of Dhansa Sheikh recorded by a Magistrate during the period of nine days he was alive. On the basis of such reasoning, the High Court has acquitted all the respondents and hence this appeal by the State against the judgment of the High Court.

9. What falls for consideration in this appeal is whether the High Court had manifestly erred in acquitting the respondents and whether the view taken by the High Court is so unreasonable and unsustainable in law as to warrant the judgment of the High Court being set aside and the convictions and sentences awarded to the respondents by the Sessions Judge being restored. We have carefully gone through the evidence in the case and the judgments of the Sessions Judge and the High Court. On a close consideration of the matter, we find that the evidence, far from being of a compulsive nature is not free from infirmities and doubts. The prosecution evidence does not conclusively establish that Dhansa Sheikh and Majibur Rahman were in possession of the paddy field and they had raised the paddy crop and in spite of it they were forcibly sought to be dispossessed by the respondents on the day in question. Even as regards the attack on the two victims the evidence is not cogent and clear to hold that it was the respondents who had caused the injuries to them. These apart, it has not been explained why no report was given to the police authorities till the Sub-Inspector himself came to the village or as to why no statement of Dhansa Sheikh was got recorded by a Magistrate even though he was alive for about nine days after the occurrence. Another factor militating against the prosecution case is that the prosecution has not explained how two of the respondents viz. Bhelu Sheikh and Naram Ali came to sustain injuries on their person. We will now deal with these aspects of the matter in greater detail.

10. It would appear that there was a dispute regarding two ownership of the paddy field, where the occurrence had taken place, between Dhansa Sheikh and his nephew minor Thakur Ali. The prosecution had examined three witnesses to speak about Dhansa Sheikh being in possession of the paddy field but their evidence is practically worthless. PW 6 Imon Nessa has given dubious evidence by stating that the paddy field was in the possession of Dhansa Sheikh as well as respondent Mahinuddin, the uncle of minor Thakur Ali. She was therefore, declared a hostile witness and cross-examined by the Public Prosecutor. PW-7 Rajat Ali has also given evidence in a vague manner by saying that he did not know as who was entitled to possession but at the time of occurrence Dhansa Sheikh was in possession but prior to that the respondent Mahinuddin was in possession. The last witness PW-13 Gauri Kanta Bora has no doubt stated that Dhansa Sheikh had raised the paddy crop on the land but his admissions in cross-examination would reveal that he would not have seen the land. He did not know the boundaries of the land and could not say whether any paddy crop had been harvested from a portion of the field on the day of occurrence. Barring these witnesses, there was only the evidence of the interested witnesses viz. PWs 8 to 10 regarding the possession of the land and the High Court has felt that in the absence of the testimony of independent witnesses, it would not be safe to place reliance on their interested testimony. The Investigating Officer ought to have examined the owners of the neighbouring fields and the village officers to prove beyond doubt that the disputed paddy field was in the possession of Dhansa Sheik and that it was the respondents who had unlawfully tried to dispossess him.

11. As regards the attack on Dhansa Sheikh and Majibur Rahman the prosecution has not examined any independent witness even though the occurrence had taken place in an open field in broad day light. The only three witnesses to speak about the attack on the two victims are PW-8 Safurannessa, PW-9 Ragia Begum and PW-10 Subrat Ali who are the wife, daughter and son respectively of Dhansa Sheikh. According to these witnesses, PW-9 Ragia Begum was on her way to a well to draw water and she was the first to see the attack on her father and brother. She is then said to have run

home and informed her mother and brother about the attack and brought them to the paddy field. PW-8 Safurannessa has deposed that she saw the respondents attacking her husband and son and even after she had reached the field and placed the head of her son on her lap, the respondents caused injuries to him. This is obviously an exaggerated version. PW-10 Subrat Ali has deposed that he too saw the attack but since some of the respondents threatened to attack him with stones he ran away from the place. The High Court has entertained doubts about the veracity of the testimony of PWs-8 to 10 because of inherent infirmities in their evidence. While PW-9 has admitted that she could not recognise the assailants PW-8 Safurannessa has stated that her daughter told her that respondents Bhelu Sheikh and Mahinuddin were attacking the two victims. Admittedly, the paddy field is about 500 yards from the house of PWs-8 to 10 Such being the case even if PW-9 Ragia Begum had seen her father and brother being attacked and had run home and brought her mother and brother, the attack would have been completed well before the time the witnesses reached the paddy field. The witnesses could not therefore, have seen the actual attack on Dhansa Sheikh and Majibur Rahman. While PW-8 Safurannessa has deposed that she saw the respondents attacking her husband and son she has not stated so in her statement under Section 161(3) Cr.P.C. Similarly, while PW. 10 Subrat Ali would say in Court that he had seen the respondents attacking his father and brother he has told the investigating officer during the investigation that he cannot give the names of the assailants of the two victims. Apart from the evidence of these three witnesses being of a conflicting nature, it has to be noted that the two victims had each sustained only three injuries. The occurrence should, therefore have taken place within a very short time. Hence by the time PWs 8 to 10 reached the paddy field the assailants should have left the place. In fact PW 8's statement during investigation is to the effect that when she reached the paddy field, she only saw her husband and son lying injured. Another factor which creates doubts about the evidence of PWs 8 to 10 is that in Dhansa Sheikhs statement Ex. 7 he has not said anything about PWs 8 to 10 being ocular witnesses to the occurrence. On the other hand he has merely stated that "the names of the witnesses will be revealed in the investigation." All these factors had weighed with the High Court when it evaluated the evidence of the prosecution witnesses.

12. These factors apart, there is no explanation as to why no one had gone to the police station to give a report about the occurrence. On the other hand, respondent Mahinuddin had gone to the police station and given a report against Dhansa Sheikh and Majibur Rahman for causing injuries to Bhelu Sheikh and Naram Ali. In order to investigate that case the Sub Inspector of Police had come to the village and it was only then a statement had been given to him by Dhansa Sheikh. Two of the respondents Bhelu Sheikh and Naram Ali had sustained injuries but the prosecution has not explained as to how they came to be injured. No effort was taken during the nine days Dhansa Sheikh was alive to have his statement recorded by a Magistrate. Such being the case, even though his statement Ex. 7 could be treated as a dying declaration, the weight to be attached to it gets considerably reduced. At best it can only be stated that the occurrence may have taken place in the manner set forth by him in Ex. 7 but the evidence falls too short to hold that the occurrence must have taken place in the manner setforth therein especially when the statement does not throw any light as to how respondents Bhelu Sheikh and Naram Ali came to sustain injuries on their person.

13. From what has been stated above, it cannot be said that the High Court had grossly erred or acted unreasonably in allowing the appeal preferred by the respondents and setting aside the

convictions and sentences awarded to them by the Sessions Judge. The appeal, therefore fails and is accordingly dismissed.