Munshi Ram and Others

Vs

Delhi Administration

Criminal Appeal No. 124 of 1965

(K. S. Hegde, S. M. Sikri, J. M. Shelat, M. Hidayatullah JJ)

27.11.1967

JUDGMENT

HEGDE, J. -

Two questions that arise for decision in this appeal by special leave are : (1) whether the appellants have established satisfactorily the right of private defence pleaded by them and (2) if they had that right, have they exceeded the same ?

The prosecution case is as follows : Field No. 1129/477 measuring five bighas and thirteen biswas situated in Kilokri was an evacuee property and as such was under the management of the managing officer. That property was acquired by the Central Government under the Displaced Persons Act, 1954. (For the sake of convenience we shall refer to that property hereinafter as evacuee property.) The same was sold by public auction on January 2, 1961 and purchased by PW 17 Ashwani Kumar Dutt for a sum of Rs. 7,600. Provisional delivery of that property was given to the vendee on October 10, 1961. The sale certificate was issued on February 8, 1962. The actual delivery was given on June 22, 1962 as per the warrant issued by PW 5, Khushi Ram, the managing officer. The said delivery was effected by PW 10 Sham Das Kanungo. On July 1, 1962 when PW 17 and his father PW 19, R. P. Dutt went to the field with PW 16. Gopal Das, PW 15 Nand Lal and one B. N. Acharya with a tractor to level the land, the appellants came armed with spears and lathis attacked the complainants' party and caused injuries to PWs 17 and 19 and the tractor driver, B. N. Acharya.

Though the appellants in their statement under s. 342 Cr. P. C. denied having been present at the scene of occurrence or having caused injuries to any one, the plea taken on their behalf at all stages was one of private defence. Their case is that their relation Jamuna (DW 3) was the tenant in the land for over thirty years. His tenancy was never terminated. He had raised crops in the filed in question. There was no delivery on June 22, 1962. If there was any delivery as alleged by the prosecution, the same was without the authority of law and as such was of no effect. Hence, Jamuna continued to be in possession of the property even on July 1, 1962. On the day prior to the occurrence, PWs 17 and 19 tried to intimidate Jamuna to come to terms with them and to peacefully deliver possession of the property to them. But he put off the question of compromise by pleading that he was going out of station and the question of compromise could be considered after his return. With a view to forcibly assert their right to the property, the complainant-party came to the field in a body on July 1, 1962 with a tractor. At that time PW 19 was armed with an unlicensed pistol. It is at this stage that the appellants who are near relations of Jamuna went to the field and asked the complainant party to clear out of the field. When they refused to do so, they pushed them and thereafter used minimum force to throw them out of the field. On the basis of the above facts, it was urged on behalf of the appellants that they were not guilty of any offence.

The courts below have accepted the prosecution version both as regards possession as well as to the manner in which the incident took place. The appellants have been convicted under Ss. 447, 324 read with 149 and 148 I.P.C. We have now to see whether on the basis of the undisputed facts as well as the facts found by the High Court, the defence can be said to have made out the plea of defence of property advanced on their behalf.

It is true that appellants in their statement under s. 342 Cr. P. C. had not taken the plea of private defence, but necessary basis for that plea had been laid in the cross-examination of the prosecution witnesses as well as by adducing defence evidence. It is well-settled that even if an accused does not plead self-defence, it is open to the court to consider such a plea if the same arises from the material on record - See In re Jogali Bhaigo Naiks and another [AIR 1927 Mad. 97]. The burden of establishing that plea is on the accused and that burden can be discharged by showing preponderance of probabilities in favour of that plea on the basis of the material on record.

The first question that arises for decision in this case is as to who was in possession of the field in dispute on the date of the occurrence i.e., on July 1, 1962. For deciding that question it is necessary to find out as to who was in possession of the same prior to June 22, 1962, the date on which that field was said to have been delivered to PW 17. On this question, the prosecution is silent. DW 3, Jamuna, in his evidence deposed that he had been in possession of that field as a tenant for over thirty years. His case was that he was formerly the tenant in respect of that field under some Muslim landlords and after their migration to Pakistan, under the officer managing the evacuee property. This evidence of his was not challenged in cross-examination. That evidence is supported by the prosecution exh. PT. The courts below have also proceeded on the basis that Jamuna was in possession of the field till June 22, 1962. Therefore, we have to see whether there was any lawful delivery of that field on June 22, 1962. At this stage it is necessary to recapitulate that the field in question had been sold by the managing officer on January 2, 1961. Its provisional delivery was given on October 12, 1961. The sale certificate was issued on 8-2-62 (exh. PF). Therefore, the government had no interest in that field on or after the aforementioned sale. It is not the case of the prosecution that Jamuna's tenancy had been terminated by any of the authorities constituted under the Displaced Persons (Compensation and Rehabilitation) Act 1954 (to be hereinafter referred to as the Act). It may further be noted that the exh. PM - the terms and conditions under which the auction of the field was held - does not show that the government had undertaken to deliver physical possession of that field to the purchaser. From the facts stated above it is obvious that Jamuna continued to be the tenant in the land even after the sale in favour of PW 17.

The prosecution case is that delivery of that field was given to PW 17 by PW 10 the kanungo on June 22, 1962 as per the delivery warrant issued by PW 5, the managing officer. Even according to the prosecution version, at the time of that delivery Jamuna was not present. There is also no evidence to show that Jamuna was aware of the alleged delivery. It is true that as a taken of the delivery, some ploughing was done at the time of the alleged delivery. At this stage it is also necessary to mention that at the time of the alleged delivery, crops grown by Jamuna were there in a portion of the field. It was said that the kanungo who delivered the field, valued the crops in question at Rs. 60 and the same was deposited by PW 17 with PW 5 as per the orders of the latter for being paid over to Jamuna. We were not told under what authority those steps were taken.

This takes us to the question whether the purported delivery is valid in law. Normally before a tenant can be evicted from his holding, his tenancy must be terminated and the eviction should be done through a court of competent jurisdiction. No landlord has any right to throw out his tenant from his holding. The law on the subject was explained by this Court in Lallu Yeshwant Singh v.

Rao Jagdish Singh and others [[1968] 2 S.C.R. 203]. Therefore, it is clear that PW 17 who had become the owner of the land long before June 22, 1962 could not have evicted Jamuna from the land in the manner alleged.

The next question is whether PW 5, the managing officer was competent to evict Jamuna. We fail to see how he could have done it. He had no interest in the land in question on June 22, 1962. The right, title and interest of the government in the land had long been alienated. The managing officer had already given to the vendee such possession as he could have namely, the landlord's possession. Thereafter it went out of the compensation pool and the managing officer had no power to deal with it unless otherwise expressly provided. Our attention has not been invited to any provision in the Act authorising the managing officer to deal with a property which had ceased to be an evacuee property. Therefore we fail to see how PW 5 could have issued any warrant for the delivery of the field in question on June 22, 1962.

Before the courts below it was pleaded on behalf of the prosecution - which plea commended itself to those courts - that the delivery in question was effected under s. 19 of the Act. Section 19, to the extent it is material for our present purpose, reads thus :

> "(1) Notwithstanding anything contained in any contract or any other law for the time being in force but subject to any rules that may be made under this Act, the managing officer or managing corporation may cancel any allotment or terminate any lease or amend the terms of any lease or allotment under which any evacuee property acquired under this Act is held or occupied by a person, whether such allotment or lease was granted before or after the commencement of this Act.
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> (2) Where any person - (a) has ceased to be entitled to the possession of any evacuee property by reason of any action taken under sub-section (1), or (b) is otherwise in unauthorised possession of any evacuee property or any other immovable property forming part of the compensation pool; he shall, after he has been given a reasonable opportunity of showing cause against his eviction from such property, surrender possession of the property on demand being made in this behalf by the managing officer or managing corporation or by any other person duly authorised by such officer or corporation.
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> (3) If any person fails to surrender possession of any property on demand made under sub-section (2) the managing officer or managing corporation may, notwithstanding, anything to the contrary contained in any other law for the time being in force, eject such person and take possession of such property and may, for such purpose, use or cause to be used such force as may be necessary."

The above provisions apply only to properties which are under the control of the managing officers or managing corporations. They do not apply to properties which have ceased to be evacuee properties. Further, it is not the prosecution case that any action under sub-ss. 1 and 2 of s. 19 had ever been taken against Jamuna. If that was so, no action under sub-s. 3 of s. 19 could have been taken. As a condition precedent for taking action under sub-s. 3 of s. 19 it was necessary to take the steps prescribed by sub-s. 2 of s. 19. It must be noted that the power of conferred under sub-s. 3 is a special power conferred for a special purpose. Such a power has to be exercised strictly in accordance with the conditions prescribed. If it is not so exercised, the exercise of the power would be vitiated. Having not taken any action under sub-s. 2 of s. 19, the managing officer was

incompetent to issue any warrant for delivery under sub-s. 3 of s. 19 under which he is said to have acted. It was for the vendee to take the necessary steps under law for taking possession from Jamuna. Therefore, it is obvious that the alleged delivery has no legal force. In the eye of the law it is non-est. Hence Jamuna continued to be in possession of the field in question even after the so-called delivery on June 22, 1962. This aspect of the case was completely lost sight of by the courts below.

It is seen from the evidence of DW 3, Jamuna, which evidence was not even challenged in cross examination, that PWs 17 and 19 were aware of the fact that the purported delivery on June 22, 1962 was merely a paper delivery. In his chief-examination, DW 3, Jamuna, deposed thus :

> "A day prior to the occurrence, R. P. Dutta and his son Ashwani Kumar had met me and had asked me to get the compromise effected. I told him that since I was proceeding out station in connection with some marriage, any talk of compromise could take place after my return from there. Both R. P. Dutta and his son Ashwani Kumar had threatened me that in case. I would not deliver possession of the land in question willingly, they would get possession of the same by force under the pressure of the police. All the accused are near relations of mine."

To repeat, this evidence was not challenged in cross-examination. From that evidence it is clear that at about the time of occurrence PWs 17 and 19 were conscious of the fact that Jamuna still continued to be in possession of the field.

PWs 17 and 19 were aware of the fact that Jamuna was unwilling to deliver possession of the field. This is borne out by the fact that at the time of the alleged delivery on June 22, 1962, police assistance was applied for and obtained.

From the foregoing it is clear that Jamuna was in effective possession of the field on the date of the occurrence. But it was urged on behalf of the prosecution that rightly or wrongly PW 17 had taken possession of the property on June 22, 1962, and therefore, if Jamuna had any grievances, he should have agitated the same in a court of law, and that his relations had no right to take law into their own hands. This contention is based on a misconception of the law. If by the alleged delivery PW 17 could not be held to have been put in possession of the field, he could not be said to have been in possession of the same. The fact that some formalities were gone through in pursuance of an unauthorised order issued by PW 5 is no ground for holding that possession of the field had passed into the hands of PW 17. Steps taken by PW 17 and others who accompanied him on June 22, 1962 were unauthorised acts. It is true that no one including the true owner has a right to dispossess the trespasser by force if the trespasser is in settled possession of the land and in such a case unless he is evicted in due course of law, he is entitled to defend his possession even against the rightful owner. But stray or even intermittent acts of trespass do not give such a right against the true owner. The possession which a trespasser is entitled to defend against the rightful owner must be a settled possession extending over a sufficiently long period and acquiesced in by the true owner. A casual act of possession would not have the effect of interrupting the possession of the rightful owner. The rightful owner may re-enter and reinstate himself provided he does not use more force than necessary. Such entry will be viewed only as a resistance to an intrusion upon possession which has never been lost. The persons in possession by a stray act of trespass, a possession which has not matured into settled possession, constitute an unlawful assembly, giving right to the true owner, though not in actual possession at the time, to remove the obstruction even by using necessary force.

It is not the case of the prosecution that between the June 22 and July 1, 1962 the complainant or his men had been to the field in question. We have earlier seen that PWs 17 and 19 had unsuccessfully tried to intimidate Jamuna on June 30, 1962 to deliver peaceful possession of the field. It is only thereafter on July 1, 1962, they along with their friends went to the field with a tractor, and at that time PW 19 was armed with a pistol for which he had no licence. It was at that stage, the appellants who are close relations of Jamuna came to the filed, some armed with sticks and others with spears. They first asked the complainant's party to clear out of the field, but when they refused, they pushed them and thereafter attacked them as a result of which PW 17, PW 19 and the tractor driver Acharya were injured (see evidence of PW 19, R. P. Dutt). The injuries caused by them were held to be simple injuries.

From the proved facts, it is evident that PWs 17 and 19 had gone to the field with their friends PW 19 being armed with a deadly weapon, with a view to intimidate Jamuna and to assert their possession. Therefore they were clearly guilty of criminal trespass. They also constituted an unlawful assembly.

The law relating to defence of property is set in s. 97 IPC, which says that every person has a right subject to the restrictions contained in s. 99, to defend - First. - his own body, and the body of any other person, against any offence affecting the human body; Secondly. - 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. Section 99 of the Code lays down that there is no right of private defence in cases in which there is time to have recourse to the protection of the public authorities. It further lays down that the right of private defence in no case extends to the inflicting of more harm than it is necessary to inflict for the purpose of defence.

It was urged on behalf of the prosecution that even assuming that Jamuna was in possession of the field in view of the delivery that had taken place of June 22, 1962, he and his relations had enough time to have recourse to the protection of the public authorities and therefore the appellants could not claim the right of private defence. The case of Jamuna and the appellants was that they were unaware of the alleged delivery on June 22, 1962. Admittedly neither Jamuna nor any of the appellants were present at the time of that delivery. Nor is there any evidence on record to show that they were aware of the same. Further, as seen earlier, the conversation that PWs 17 and 19 had with Jamuna on the day prior to the occurrence, proceeded on the basis that Jamuna was still in possession of the field. Under these circumstances when the complainant party invaded the field on July 1, 1962, Jamuna's relations must have been naturally taken by surprise. Law does not require a person whose property is forcibly tried to be occupied by trespassers to run away and seek the protection of the authorities. The right of private defence serves a social purpose and that right should be liberally construed. Such a right not only will be a restraining influence on bad characters but it will encourage the right spirit in a free citizen. There is nothing more degrading to the human spirit than to run away in the face of peril.

In Jai Dev v. State of Punjab [[1963] 3 S.C.R. 489], this Court while dealing with the right of defence of property and person observed (at. p. 500) :

> "In appreciating the validity of the appellants' argument, it would be necessary to recall the basic assumptions underlying the law of self-defence. In a well-ordered civilised society it is generally assumed that the State would take care of the persons and properties of individual citizens and that normally it is the function of the State

> to afford protection to such persons and their properties. This, however, does not mean that a person suddenly called upon to face an assault must run away and thus protect himself. He is entitled to resist the attack and defend himself. The same is the position if he has to meet an attack on his property. In other words, where an individual citizen or his property is faced with a danger and immediate aid from the State machinery is not readily available, the individual citizen is entitled to protect himself and his property. That being so, it is a necessary corollary to the doctrine of private defence that the violence which the citizen defending himself or his property is entitled to use must not be unduly disproportionate to the injury which is to be averted or which is reasonably apprehended and should not exceed its legitimate purpose. The exercise of right of private defence must never be vindictive or malicious."

In Horam and other v. Rex [50 Cr. L.J. 868], a division bench of Allahabad High Court observed that where a trespasser enters upon the land of another, the person in whom the rightful possession is vested, while the trespasser is in the process of acquiring possession, may turn the trespasser out of the land by force and if in doing so, he inflicts such injuries on the trespasser as are warranted by the situation, he commits no offence. His action would be covered by the principle of private defence embodied in Ss. 96 to 105 IPC. Similar was the view taken by a division bench of the Hyderabad High Court in Sangappa and Ors. v. State [I.L.R. [1955] Hyderabad 406]. Therein it was held that if some body enters on the land of a person who does not acquiesce in the trespass he would still retain possession of the land and as the possessor of the land, is entitled to that possession. If he brings friends with him and with force of arms resists those who are trespassing on the land, who are also armed, he and his friends would not be guilty of forming themselves into an unlawful assembly, for those who defend their possession are not members of an unlawful assembly. If the person acquiesces in his dispossession and subequently, under claim of title comes again to dispossess his opponents, then he and his friends would be members of an unlawful assembly. That is also the view taken by the Madras High Court in re. Mooka Nadar [A.I.R. 1943 Mad. 590]. We are in agreement with the ratio of those decisions.

On the basis of the proved facts it cannot be said that the appellants had exceeded their right of private defence.

In the result, this appeal is allowed, the conviction of the appellants is set aside and they are acquitted.

#R.K.P.S. Appeal allowed.##

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