

Nanhu Kahar

Vs

The State of Bihar

Criminal Appeal No. 268 of 1968

(A. N. Ray, C. A. Vaidialingam JJ)

03.03.1971

JUDGMENT

RAY, J. -

1. This is an appeal by special leave from the Judgment, dated April 5, 1968, of the High Court of Patna setting aside the order of acquittal passed by the Sessions Judge, Chapra and convicting Nanhu Kahar under Section 326 of the Indian Penal Code and sentencing him to undergo rigorous imprisonment for one year.

2. There were three accused Hikayat Kahar, Shanti Devi and Nanhu Kahar. The alleged occurrence took place at about noon on September 22, 1964, at a field in village Bikrampur, Police Station Marhowra, District Chapra in Bihar. Nagendra Prasad Singh was a co-sharer landlord of the village and he was in possession of 27 Kathas prior to and also subsequent to the vesting of the Zamindari in the State of Bihar. Nagendra Singh had grown maize and other crops in an area of 6 Kathas in the northern portion of the 27 Kathas. On the crucial date when Nagendra Singh along with his labourers went to the plot his brother Rajendra Singh also came there. Harvesting of maize was going on. The accused tuned up. Hikayat and his wife Shanti Devi were armed with Lathis. Nanhu was armed with a sword. Hikayat ordered assault and inflicted a Lathi blow on the abdomen of Nagendra Singh. The blow with sword was aimed by Nanhu Kahar at the head of Nagendra Singh. Nagendra Singh warded off the blow with the help of his hand. His hand was cut. Several other sword blows were inflicted and Nagendra Singh fell down and became unconscious. His brother Rajendra Singh went to his rescue. He was given some Lathi blows by Hikayat and his wife, and blows with sword by Nanhu Kahar. Nagendra Singh and Rajendra Singh were taken to the dispensary. Finding the condition of Nagendra Singh serious a dying declaration was recorded. Nagendra Singh was sent to Patna Medical College Hospital.

3. The accused were after investigation charged with offence under Sections 307, 37/109, 326, 323 and 34 of the Indian Penal Code.

4. The defence was that the land was in possession of the accused from long before the date of occurrence and the crops were sown by the accused. Nagendra Singh and his brother Rajendra Singh came to the field along with nine other persons because of enmity. On protest being raised by Hikayat and Nanhu, assault was ordered by Nagendra Singh. There was infliction of blow on the head of Hikayat by Rajendra Singh. Another blow was inflicted upon Hikayat by one Rameshwar Singh. Hikayat fled away. Hikayat was an old person. His wife Shanti was about 60 years old. The house of Hikayat was set on fire and three of his houses were burnt.

5. The Sessions Judge acquitted the accused.

6. The High Court found on the evidence that a number of sword injuries on Nagendra Singh and some on Rajendra Singh were inflicted by Nanhu Kahar son of Hikayat.

7. The High Court found that the house of the accused stood adjacent to the north of the maize field of Nagendra Singh. Nagendra Singh asserted his possession of the maize field with respect to 27 Kathas in the year 1963. Accused No. 1 relied on written statement filed in Title Suit No. 133 of 1960 in which the accused claimed to be in possession of the self same land. The High Court found that dispute was going on with regard to the plot of land before the date of occurrence between Nagendra Singh and the accused. The High Court found that it was not possible on the materials on record to come to a definite conclusion that the land was actually in possession of Nagendra Singh or that he had grown the maize crop. Therefore, the High Court held that the accused had a right of private defence when they found that their maize crop was being cut away.

8. In that view of the matter the only question is whether the right of private defence was exceeded. The injuries sustained by the accused were minor injuries. There was nothing to show that infliction of serious injuries on Nagendra Singh and Rajendra Singh was necessary in defence of property of defence of person. There was evidence of Nagendra Singh himself that some of the sword blows were inflicted on him even after he fell down on getting the blows. That was not challenged in cross-examination.

9. The High Court held that the right of private defence was exceeded and convicted the appellant. We do not see any reason to interfere with this conviction. There is no merit in this appeal. The appeal fails and is dismissed.

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