

Lakshmi Tiwari and Another

Vs

The State of Bihar

Criminal Appeal No. 160 of 1968

(J. M. Shelat, H. R. Khanna JJ)

19.01.1972

JUDGMENT

SHELAT, J. -

1. Makhan Tiwari was the Jotedar of plot No. 60 of Birajpur under Saraiyahat Police Station. He was also the Pradhan of the village. He had a son who pre-deceased him. On the death of Makhan, his properties, including plot No. 60, devolved on Mst. Nand Kishore (P.W. 3), the widow of that pre-deceased son, he having left no issue surviving him. On survey and settlement of the lands in Birajpur, the said plot No. 60 was mutated in her name and she remained in possession and cultivation thereof.
2. On July 10, 1962 Mst. Nand Kishore executed a registered bhugutbandha in respect of plot No. 60 in favour of Kanti Mandal (P.W. 1), and delivered its possession to Kanti Mandal and his father Garbhu.
3. The prosecution case was that on July 22, 1962, while Kanti Mandal and Garbhu were having the said land ploughed by two labourers, the appellant Lakshmi Tiwari, his father Bittu, appellant Digan Raut and some others, armed with various weapons, came to the plot and on Kanti Mandal and Garbhu declining to halt its ploughing, attacked them. Appellant Digan started the attack with a lathi blow on the right arm of Garbhu, and appellant Lakshmi Tiwari followed it up by two sword cuts on his head. On Garbhu falling down, the appellants and their companies turned against Kanti Mandal, who also was attacked with sword, spear and lathis. After the assailants left the scene of offence, the two injured men were removed to Saraiyahat dispensary from where Garbhu, whose condition was serious, was carried to Deoghar hospital. Kanti Mandal gave his statement to the police who by that time had arrived at the dispensary, which was treated as the Fardbeyan, (Ex. 1). Garbhu also made his statement thereafter which was recorded as his dying declaration, (Ex. 3).
4. Garbhu had eight injuries, of which three were incised wounds. Kanti Mandal had six injuries, out of which three were incised wounds. Fortunately, neither of them succumbed to his injuries and both figured as witnesses at the trial. The injuries received by them were caused by both sharp-cutting instruments such, as a sword, and blunt weapons, such as lathis.
5. On these allegations, the appellants together with 14 others were charge-sheeted under various sections of the Penal Code. Though each of them put up a separate defence, the principal defence was that on the death of Makhan in 1918 a question arose as to who should succeed him as the Pradhan of the village. Mst. Nand Kishore at that time supported the candidature of Bittu, the father of Appellant 1 and gave plot No. 60 and certain other lands as security for the Pradhanship.

According to the defence, Bittu Tiwari had since then been in possession and cultivation of those land including plot No. 60. By 1962, however, Mst. Nand Kishore fell under the influence of Jageshwar (P.W. 5) and Kanti Mandal, who managed to obtain from her the said bhugutbandha, on the strength of which Kanti Mandal and his father Garbhu claimed the right of possession. The defence further was that on the day in question appellant Lakshmi Tiwari and his father Bittu were in possession of plot No. 60, and even if it were found that the party of the appellants caused injuries to Kanti Mandal and Garbhu, they did so in exercise of the right of private defence of property.

6. The Trial Court convicted the two appellants and three others, and acquitted the rest. On appeal by the five convicted persons before the Additional Sessions Judge, the convictions against the two appellants were maintained, while the others were given benefit of doubt and acquitted. The two appellants then filed a revision application before the High Court. The High Court maintained the convictions against appellant Lakshmi Tiwari under Sections 307, 326 and 447, and against appellant Digan Raut under Sections 323 and 447 of the Penal Code, but reduced the sentences awarded to them to two years imprisonment in the case of Lakshmi Tiwari, and to three months imprisonment in the case of Digan Raut. Hence this appeal by them under special leave.

7. As aforesaid, altogether 16 persons, including the present appellants, were originally charge-sheeted and tried before the Trial Court. The Trial Court acquitted 11 of them and convicted only five. On appeal, the Additional Sessions Judge gave benefit of doubt to three of them, but maintained the convictions of the two appellants. That was chiefly because of certain discrepancies between the versions of the two injured men given by them in their previous statements and their version during the trial. But there being concurrent findings regarding participation by the two appellants in the assault on Kanti Mandal and Garbhu, those findings could not be disturbed in revision before the High Court, and the High Court maintained their convictions reducing, however, the sentences awarded to them. These concurrent findings were given on the basis of the evidence of the two injured men, corroborated, so far as the appellants were concerned, by their previous statements as also by the evidence of one of the two labourers, wit. Budhu employed on the day of the incident for ploughing. Evidence of the rest of the witnesses, who claimed to be eye-witnesses, was rejected as the Trial Court found that they had not arrived at the place of the incident in time to see the assault, but came there after it was over. The Trial Court, however, was entitled to pass its order of conviction on the testimony of the two victims and the said Budhu (P.W. 7). The concurrent findings given by the Trial Court and the Additional Sessions Judge could not be challenged in this appeal under special leave, and, therefore, must stand. In that position, the appellants must be regarded as having caused injuries to the two victims which according to the evidence were caused by appellant 1 with a sword and by appellant 2 with a lathi.

8. The question raised by Mr. U. P. Singh, however, was that on the assumption that the appellants did assault and cause injuries to the two victims, the assault was legitimate, it being in exercise of the right of private defence of property, that is to say, in defence of their possession of plot No. 60 which was being intruded upon by Kanti Mandal and Garbhu. That contention must depend upon the question as to who on that day was in possession and even if appellant 1 and Garbhu were in possession, whether an assault with a sword and a lathi was called for. Fortunately, there is enough documentary evidence on record which would enable us to decide the question raised by Mr. Singh without having to resort to conflicting and interested oral testimony.

9. We start first with the bhugutbandha (Ex. 2), which is a registered document and unquestionably executed by Mst. Nand Kishore in favour of Kanti Mandal on July 10, 1962. The genuineness of the

document cannot be successfully challenged as it is in the first place a registered document, and in the second place, attested by three witnesses and endorsed by the registering authority evidencing its execution by Mst. Nand Kishore who also in her evidence admitted its execution. The document is in the nature of a mortgage to secure repayment of Rs. 600 paid to her by Kanti Mandal, and confers on the creditor the right of possession of plot No. 60 for a period of six years. Prima facie, therefore, it shows that Kanti Mandal was given possession of the plot in question, for, otherwise he was not likely to part with Rs. 600. The document itself recites that Mst. Nand Kishore had borrowed that amount from Kanti Mandal as she needed it for her household expenses. Its operative part records as follows :

"I, the executant of my own accord took a loan of Rs. 600/- in cash from the aforesaid Creditor and in lieu of payment thereof, I, the executant, executed a Bhuktabandha satta bharna deed in respect of 10 kathas 10 dhurs of land out of my own jot and for a term of six years as mentioned above and gave it in his cultivation. Accordingly the claimant should cultivate the same and pay rent thereof annually to the landlord and appropriate the produce thereof."

10. The document together with the testimony of the executant herself furnishes a fairly strong piece of evidence of the right of Kanti Mandal of possession of the land mortgaged to him for a period of six years. The other evidence shows that the land appeared to have been freshly ploughed and such ploughing had not caused any damage to paddy seedlings grown in one corner or part of the land apparently by appellant 1.

11. Mr. Singh, however, urged that the document (Ex. 2) and the evidence relating to it did not by itself determine the question as to who actually was in possession on the day of the incident and that there was other documentary evidence on record showing that appellant Lakshmi Tiwari and his father Bittu were in actual and lawful possession, to safeguard which against the intrusion by Kanti Mandal and his party the appellants were entitled to use force, if necessary. According to Mr. Singh, that evidence shows that right from 1918 when the question arose as to who should succeed Makhan as the Pradhan the land in question was in possession of Bittu and his son, appellant Lakshmi Tiwari. In support of this contention, he relied on the order-sheet in Revenue Miscellaneous Case 114 of 1918-1919, where under Bittu succeeded Makhan as the Pradhan, and when Mst. Nand Kishore supported his candidature and gave the plot in question as security. It appears from the order-sheet that the persons, appointed as the Pradhan, would be responsible for the collection and payment of revenue or rent payable by the villagers to the zamindar and had to offer adequate land as security for such collection and payment. As Bittu had not sufficient land, plot No. 60 was offered as security by Mst. Nand Kishore, since she was supporting him in being appointed as the successor of her father-in-law, Makhan to the post of Pradhan.

12. Plot No. 60, however, was given as security only. That fact did not mean that she parted with her rights in it as the jotedar. It would, however, appear that since then Bittu cultivated the land as the manager or agent of Mst. Nand Kishore, and not in his independent right. This position clearly emerges from a number of receipts showing payment of revenue by Mst. Nand Kishore through Bittu, obviously as her manager or agent. These receipts are for the year 1951 to 1962, in all of which Mst. Nand Kishore has been mentioned as the tenant who paid the revenue from year to year through Bittu Tiwari. As against this evidence, neither Bittu nor appellant Lakshmi Tiwari was in a position to produce any evidence showing any transfer of interest of Mst. Nand Kishore in their favour. The result inevitably is that although the land remained as security for the post of Pradhan held by Bittu, Mst. Nand Kishore continued to be its jotedar. She was, therefore, entitled to execute

the said bhugutbandha in favour of Kanti Mandal and since Bittu was only her agent, he had no right to challenge the said deed or to contravene any rights of Kanti Mandal thereunder. Neither Bittu, nor his son Lakshmi Tiwari could claim possession of the said land in his own independent right as against Kanti Mandal. Consequently, there was no question of either of them, much less appellant 2, having any right of private defence of property in respect of plot No. 60 against Kanti Mandal or his father.

13. That being the position, and there being concurrent findings that both the appellants participated in the attack on Kanti Mandal and his father Garbhu, which could not be challenged in this appeal, their conviction must be sustained.

14. The appeal, therefore, fails and is dismissed.

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