

Nanthan

Vs

The State of Madras

Criminal Appeal No. 308 of 1971

(C. A. Vaidialingam, I. D. Dua, A. Alagiriswami JJ)

23.11.1972

JUDGMENT

ALAGIRISWAMI, J. -

1. This is an appeal by special leave against the judgment of the High Court of Madras confirming the sentence of death passed on the appellant.
2. The wife of P.W. 10 Hussain Khan, had some lands which the appellant and his father had been cultivating for some years. They fell into arrears in respect of the lease amount due to the landlady. It was alleged that the appellant and his father voluntarily surrendered the land on February 16, 1969, and on the same day a lease was executed in favour of P.W. 3. The prosecution case was that on January 5, 1970, when P.Ws. 1 to 5 went to harvest the second crop raised by P.W. 3, the appellant and others came and attacked the persons who were harvesting the crop which resulted in the death of one velayudhan. The contention on behalf of the appellant and others was that they had never surrendered the possession of the land, that they had themselves raised the crop and the landlord was trying to evict them with the help of P.Ws. 1 to 5 and when P.Ws. 1 to 5 tried to harvest the crop and the appellant and others objected to it, these prosecution witnesses joined together and beat up the appellant and others. Both the courts below examined the question of the possession of the land at great length and came to the conclusion that P.W. 3 was in possession of land and cultivated the crop and that the appellant's party were the aggressors.
3. The question as to who was in possession of the land assumes considerable importance in the circumstances of the case. The special leave has been granted limited to the question regarding the nature of the offence, if any, of which the appellants could be convicted. If the finding of the courts below that P.W. 3, was in possession should be upheld then it is obvious that the appellant will have nothing to say in his favour. If on the other hand it is held that he had not surrendered the possession of the land and did continue to be in possession and raised the crop and the prosecution party had tried forcibly to harvest the crop, then the question of the appellant's party's right of private defence would arise. In that case the nature of the offence committed by the appellant would be different.
4. We have carefully gone through the evidence and are of the opinion that the conclusion arrived at by the courts below regarding the possession of the land has been arrived at only by ignoring certain relevant pieces of evidence. It may be argued that the fact that only the counter lease deed (Ex. P-2) was produced and not the original lease deed, may not be of any importance. So also the fact that there was no document to evidence surrender of possession by the appellant's party of the land which they earlier had under their possession. But it is difficult to believe that having voluntarily surrendered possession of the land on February 16, 1969, and not having raised any objection either

at the time when the P.W. 3, raised the first crop or harvested it or even when he raised the second crop the appellant's party would take it into their heads for the first time to object when the second crop was about to be harvested nearly a year after the alleged voluntary surrender. In his examination under Section 342 the appellant had stated before the Sessions Court that he was cultivating the land. On his examination before the committing Magistrate he had stated that he went and shouted why they were harvesting what he had cultivated. That this was what should have happened is also evident from P.W. 1's first information report given before the Sub-Inspector of Police on January 5, 1970. In that the appellant and his father Arumugham are said to have shouted. "You mother seducers, we have taken the field on pattom. Don't harvest". In his evidence also P.W. 1 has stated that the "accused said that they had cultivated that field and objected to our harvesting that field", though he also stated that he had previously harvested the field as requested by P.W. 3, and the accused did not object to his harvesting at that time. That, as we said earlier, is difficult to believe. There is the further admission by this witness that after 20 days of the occurrence the accused themselves harvested the paddy from that field. P.W. 11 stated that the police harvested the paddy after the occurrence, P.W. 16, Inspector of Police was not even asked whether this evidence of the two witnesses was true or not. It would seem to disprove the prosecution case that P.W. 3, was in possession. P.W. 3 himself has admitted that the accused said that he should not harvest the land saying they were previous lessees. P.W. 4 has also given evidence to that effect. Therefore, the evidence of P.W. 5, that the accused did not object to the harvesting cannot be accepted. It may also be mentioned that it had been suggested to P.W. 2, that he and his associates were out to evict the accused from paddy field on behalf of P.W. 10, and they created the quarrel and in that quarrel Velayudham died. It was suggested to P.W. 3, that his party had attempted to harvest the land in spite of the protests of the accused and that led to assault between the accused on the one hand and P.W. 3, and his co-workers on the other and in the confused melee Velayudham sustained injuries. To P.W. 5 also the suggestion was put that he and others were engaged by P.W. 10 to evict the party of the accused. That these suggestions were not wholly baseless is evident from what we have discussed above.

5. The behaviour of P.W. 3 is very significant. He did not enquire before he took the land on lease from P.W. 10, as to who was cultivating the land. He also did not enquire as to what rent was paid by the previous lessee. He did not pay any advance rent by way of deposit. As the appellant and his father were said to be in arrears for three years it is unlikely that P.W. 10 would have leased the land to P.W. 3 without any deposit. He is a mere coolie. It is not surprising, therefore, that it was suggested to him that he and his father-in-law helped land owners to get their lessees evicted from their land and that he was paid by P.W. 10 to evict the accused from the land and on such payment he and others went to the land to harvest the paddy crop. His uncle, P.W. 2, stated that he and P.W. 3, would go to for coolie work. It would, therefore, appear that P.W. 3, was not in a position to take a land on lease and it is unlikely that P.W. 10, having had the experience of the appellant and his father not paying any rent for three years would lease the land to P.W. 3, without taking any deposit. These facts seem to us to make it clear that the story of the voluntary surrender by the appellant and his father of the land which was cultivated by him cannot be true, nor would they have suddenly taken into their heads to object to harvesting nearly a year after their alleged voluntary surrender and after one crop had already been harvested without any objection from them.

6. Once it is held that the possession of the land was not with P.W. 3, and that the objection raised by the accused party to harvesting of the crop by P.W. 3, and his men, was genuine the whole occurrence takes on a different aspect. It does not appear that the harvesting party was armed with any deadly weapons and there could not have been any fear of death or grievous hurt on the part of the appellant and his party. Under Section 104, I.P.C., their right, therefore, was limited to the

causing of any harm other than death. It should, therefore, be held that the accused, though they were exercising the right of private defence of property, had exceed that right. The case, would, therefore, fall under Exception 2 to Section 300, I.P.C., and the offence committed by the appellant should be held to amount to culpable homicide not amounting to murder, as it was committed in good faith of the right of private defence of property but it exceeded the power given to him by law and caused the death of the person against whom he was exercising such right of defence.

7. The appeal is, therefore, partly allowed and the sentence of death passed on the appellant is modified to one of life imprisonment.

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