

ALLAHABAD HIGH COURT

Bhartu

Vs

State (Allahabad)

Criminal Appeal No. 1248 of 1950

(Asthana, J.)

30.11.1950. 06.07.1953

JUDGMENT

Asthana, J.

1. These two appeals arise out of two cross-cases relating to the same incident which took place on 30.4.1949 at about 9 a. m. in the morning in village Mavi Kalan, P.S. Binoli, District Meerut. The dispute was over a field no. 934 in that village. This field at first belonged to Jialal and others who executed a sale-deed in favour of Smt. Kesar, mother of Yadram. She executed a lease in respect of this plot in favour of Yadram. After the sale-deed, Bhartu and Munshi filed a pre-emption suit against Smt. Kesar and obtained an 'ex parte' decree against her. In execution of this ex parte decree the decree-holders (accused) obtained actual possession over the field and ploughed it. Shiam Singh, a brother of Yadram who was one of the defendants in the pre-emption suit got the ex parte decree set aside and the case restored. Thereafter, it was decided in favour of Yadram and he obtained actual possession over the southern half of the field and formal possession over the northern-half, as in this portion the chari crop of the accused was standing at that time. After the chari crop had been cut, Yadram sowed sugarcane crop in it. On 30.4.1949, at about 9 a. m. in the morning when Yadram and Tejram were weeding their sugarcane crop in the field the accused went there armed with spears, tabar and lathis and wanted to sow Juar crop in it. Yadram protested against it and tried to stop them whereupon he was assaulted by the accused. Tejram was also attacked by Ram Singh with a tabar. Both Yadram and Tejram shouted for help and on hearing their cries, Jahana, Chandan, Maharam and Raj Singh who accidentally happened to be present near the place of occurrence rushed to their help. They too were beaten and Maharam died as a result of the injuries received by him the next morning. The report of this occurrence was made by Yadram the same night at 8 p. m. at P.S. Binoli which is five miles to the east of the village Mavi Kalan and the accused were named in it.

2. A complaint was also made by Balwant, son of Munshi against Yadram, Tejram and eight other persons under Sections 148/325/336 read with Section 149, Penal Code. It was alleged in this complaint that the complainant had sown sugarcane crop in the plot in dispute and on

30.4.1949 the accused, namely Yadram and others came to the plot in dispute armed with lathis, tabar, spears, etc., and attacked Munshi and beat him, that he shouted for help. Ram Singh went to his help but he too was beaten. Later on, Bhartu Mohkam and other persons went there to intervene and save Munshi and Ram Singh from being further beaten but they too were assaulted and received simple and grievous injuries, that the complainant went to P.S. Binoli to make a report about the occurrence but their report was not taken down as the accused were already present there.

3. Both these cases were tried by a Magistrate of the first class. He found that the accused had cultivated sugarcane crop in the northern portion of the plot in dispute, that the party of the complainant Yadram forcibly wanted to dispossess them from this plot and, in order to achieve this object, he and his companions went there armed with lathis and spears and first attacked the party of the accused, that the accused Bhartu and others in their self-defence also struck them with lathis and other weapons and inflicted injuries on them. He, however, convicted the accused Bhartu and others because he was of opinion that they had exceeded the right of self-defence. They were each convicted under Section 304 read with Section 149 and also under Section 148, Penal Code and were sentenced to five years' rigorous imprisonment under the former section and one year's rigorous imprisonment under the latter section and both the sentences were made concurrent.

4. In the other case which arose out of the complaint of Munshi he found that the accused Yadram, Tejram, Chandan, Jahana and Rajaram alias Raje were the aggressors and he, therefore, convicted each of them under Section 323 read with Section 149, Penal Code and also under Section 148, Penal Code and sentenced each of them to nine months' rigorous imprisonment under Section 149, Penal Code.

5. It was contended on behalf of the appellants Bhartu and others in Appeal No. 1248 of 1950 that the learned Magistrate had committed a mistake in holding that they had exceeded their right of self-defence. It was also contended that, in view of the finding of the learned Magistrate that Yadram and his party were the aggressors and wanted to dispossess them forcibly from the plot in dispute and with that object in view, they all attacked them with lathis and other weapons, they were justified in beating them in their self-defence and it was not possible for the appellants, in the circumstances, to weigh their strokes before inflicting them on the party of the complainant Yadram and others.

6. The question which arises for consideration is whether from the evidence on the record it is proved that the accused Bhartu and others were in possession of the northern portion of the plot in dispute and had cultivated the sugarcane crop in it. The prosecution examined several witnesses in proof of the fact that the sugarcane crop had been cultivated by the complainant Yadram and not by the accused. It was, however, not disputed before me on behalf of the complainant that when the 'amin' in execution of the decree for pre-emption went to the spot for delivery of possession, the accused Bhartu and others were in possession of the northern portion of the plot and their chari crop was standing in it. It appears from the record that the amin Sri

Benjamin delivered actual possession over the southern portion of the plot to the decree-holders and as regards the northern portion in which the chari-crop was standing he delivered only formal possession and the actual, possession was to be delivered to the decree-holder after the chari crop had been cut from it; that the accused examined several witnesses in proof of the fact that the actual possession, over the northern portion of the plot was not delivered to the complainant Yadram even after the chari crop had been cut and that the sugarcane in it was grown by the accused. Besides the oral evidence produced on behalf of the accused there is also the documentary evidence in proof of the fact that the sugarcane crop was actually cultivated by the accused in the northern portion of the plot and this evidence consists of irrigation parchas and the entries in the khatauni maintained by the patwari. The complainant did not produce any documentary evidence in proof of the fact that the sugar-cane crop had been raised by him. If he had cultivated the sugarcane crop he must have irrigated it and in that case he would have got irrigation parchas in proof of the fact that it was irrigated by him. There is also no satisfactory explanation as to why his name was not entered over the sugarcane crop in the revenue papers in case he had cultivated it. It appears to me that the accused did not deliver actual possession over this portion of the plot after cutting the chari crop and themselves cultivated sugarcane crop in it and, in my opinion, the finding of the lower Court on this point appears to be correct.

7. It was next argued on behalf of the complainant that even if the accused did not deliver possession after cutting the 'chari' crop and themselves cultivated the sugarcane crop in it, they were mere trespassers and had no right to beat the complainant when he went to the field in dispute in exercise of his legal right. The question for consideration is whether the accused had any right of self-defence as alleged by them. In my opinion even if the accused were trespassers and had wrongly cultivated the northern portion of the plot after cutting the 'chari' crop the complainants had no right to take the law into their own hands and beat the accused in order to dispossess them from the field. If the complainant's party were the aggressors and beat the accused first, there can be no doubt that they had a right of self-defence. It has, however, been disputed before me on behalf of the complainant Yadram that he or his party were the aggressors.

8. It has been argued on his behalf that the sugarcane crop had been cultivated by him and the accused wanted to sow Juar in it and actually scattered some juar seeds in the field. I have already held above that from the evidence on the record it was proved that the sugarcane crop had been cultivated by the accused. The allegation in the complaint of Yadram that the accused had gone to the field in order to sow Juar and had actually scattered some Juar seeds in it does not appear to be correct. It appears from the evidence of the investigating Sub-Inspector that he went to the place of occurrence on the same day (30.4.1949) and found some Juar plants standing amidst the sugarcane crop. It is unlikely that the Juar seeds which are said to have been scattered in the field could have become Juar plants on the same day.

9. The evidence on the record shows that on the side of the complainant Yadram, Maharam, Chandan. Raje and Jahana were injured and that Maharam died as a result of the injuries received by him. These four persons are residents of an other village Sankal Puthi, P.S. Binoli. There is no

doubt that they were present at the time of the occurrence and took part in it. It appears from the first information report made by Yadram that these four persons were his guests and it was only by chance that they arrived at the field at the time of the occurrence. Sankal Puthi is about 6 or 7 koses i.e. 12 or 14 miles from village Mavi Kalan. There is no satisfactory explanation on behalf of the prosecution as to how these four persons happened to reach the place of occurrence which is at a great distance from the house of Yadram complainant. No doubt Yadram in his report said that these four persons who are related to him were his guests, but in his statement made in the lower Court he denied that these persons were staying at his house. The evidence of Chandan, P. W. 5, is that he, Maharam, Jahana and Raje were going to Yadram's place in order to fetch four tins of ghee for the purpose of a marriage which was to take place at their house and on the way they heard a noise on the side of Yadram's field and then they all went there and tried to save Yadram and Tejram, who were being beaten by the accused Bhartu and others but they too were beaten. The evidence of P. W. 6 Jahana and P. W. 7, Raje is also to the same effect. All these witnesses denied that they were staying at the house of Yadram on the night before the occurrence or that they had been called by Yadram to take part in the beating of the accused Bhartu and others who had wrongly cultivated the plot in dispute and had sown sugarcane crop in it.

10. The evidence on the record does not show that any 'canaster' was recovered from the possession of these witnesses on the spot. If they were really going to fetch ghee from the village of Yadram, they must have had empty 'canasters' with them. There also does not appear any satisfactory reason why all these four persons should have gone to the village to fetch ghee when it could have been very well brought by one of these persons. The evidence of P. W. 10 Sri Ghansham Singh, Sub-Inspector, shows that these four persons were staying in the village Mavi Kalan with Yadram on the night before the occurrence and that they had arrived there the same night. In my opinion the finding of the lower Court that these four persons who are related to Yadram had been called by him in order to take part in the beating of the accused Bhartu and others is correct. There is otherwise no satisfactory explanation for the presence of all these four persons at the place of occurrence which is at a long distance from their village.

11. The accused Bhartu and others examined several witnesses in their defence including Dr. Gajraj Singh. The evidence of Dr. Gajraj Singh shows that Munshi had ten injuries on his person including two punctured wounds and two contused wounds and a compound fracture of the right arm, that Ram Singh accused had seven injuries on his person including a contused wound on the head and a contusion in the right ear, that the accused Bhartu had a contused wound in the head, a punctured wound in the left forearm, fracture of the left ulna which was a grievous hurt and two abrasions in the hands. It also appears from the defence evidence that Yadram was in actual possession of the disputed portion of the plot and had cultivated sugarcane crop in it and that the accused were the aggressors. There is no doubt that the total number of injuries on the side of the complainant were somewhat more than those on the side of the accused persons but these injuries by themselves do not necessarily prove that the accused were the aggressors and had exceeded their right of self-defence. When lathis, tabar and other sharp-edged weapons are being used by

both the parties in the fight, it is very difficult for any side to weigh the strokes, that are inflicted by him and to inflict injuries only up to a certain limit and no more.

I agree with the finding of the lower Court that from the evidence and the circumstances of the case it is clearly proved that the party of Yadram was the aggressor and they forcibly wanted to dispossess the accused Bhartu and others from the plot in dispute in which they had cultivated sugarcane crop and, in order to achieve this object, Yadram had called his relations Maharam and others from village Sankal Puthi and they all beat Yadram and others and in their defence they too beat them with lathis and inflicted a number of injuries as a result of which one of them, namely, Maharam died. It is very doubtful that the accused Bhartu and others in inflicting injuries in their self-defence exceeded their right. I am not inclined to agree with the lower Court that it has been satisfactorily proved beyond doubt that the accused Bhartu and others exceeded their right of self-defence.

12. In the circumstances, the appeal of Bhartu and others is allowed and their conviction and sentence under Sections 304/149 and 148, Penal Code is set aside. They are on bail and they need not surrender. Their bail bonds are discharged. The other Appeal No. 1255 of 1950 filed by Yadram and others is dismissed. As they are on bail, they shall surrender for it and serve out their sentences. Leave to appeal to is refused.

Order accordingly.