CALCUTTA HIGH COURT

Saheb Ali

Vs

Emperor

(Bartley , J.)

10.08.1932

JUDGMENT

Bartley, J.

1. The three appellants have been convicted by the learned Additional Sessions Judge of Mymensingh sitting with a jury, who returned a majority verdict of guilty under Section 147 and 149/304, I.P.C., against all of the appellants and under Section 304, I.P.C., against Sahabali alone. The material facts alleged by the prosecution were that Sataulla and Manu owned a plot of land on which they grew paddy. On 20th November 1930 these appellants and a mob of other people entered the land and began to cut the crop. Sataulla, Manu and another man came up and protested. Appellants Sahabali and Manir speared Manu and Sabel struck him with a lathi. They then assaulted Sataulla with lathis. Both Manu and Sataulla died subsequently from the injuries. The substantive defence set up was that the land belonged to Sabel, who sowed aus and amah paddy in it. He cut the aus, but there was a golmal at the time of cutting the aman. The other appellants simply pleaded not guilty, and no alternative version of the actual fracas was alleged or sought to be proved, although it would appear that at least one man among the alleged aggressors died of injuries. The learned Judge, early in his charge, laid down that the first question for the jury was who was in possession of the land on the date of occurrence; in other words, who grew the paddy. After discussing the evidence on this point in detail, he told the jury that if they found possession with the prosecution side the accused had no right of private defence. If they found that Sabel was in possession, the next question was if he and his party had exceeded the right of private defence. If the jury could not, on the evidence, decide who was in possession, they may consider whether it was a case of disputed possession, and then the question will arise which party was the aggressor,

2. He referred to these propositions as three alternatives, and proceeded to direct the jury as follows: If Sataulla and Manu were in possession, the appellants, provided the jury held "they were all there" are guilty under Section 147. They might under conditions stated by the learned Judge be guilty under Sections 149 and 304 of the Code. If the jury held that Sabel was in possession, none of the appellants were guilty of any offence. Finally, if it was a case of disputed possession and both parties went to the land prepared to fight, neither party could claim any exemption from liability for the consequence of their acts, and even then the appellants would be guilty of these offences of which they would have been guilty had Manulla and Sataulla been in

possession. On these directions the jury returned a verdict that it was a case of disputed possession, and that the appellants were guilty as recapitulated above. (The judgment after overruling the contentions regarding prejudice to accused by non-summoning some of their witnesses and misdirections on the question of fact of possession proceeded.) It remains to consider in the light of the somewhat unusual verdict of the jury, the validity of the directions regarding what the learned Judge terms "disputed possession."

3. His first direction was that if the jury found disputed possession the question would arise which party was the aggressor. Later he said that if it was a case of disputed possession and both parties went to the land prepared to fight ... the appellants would be guilty of those offences of which they would have been guilty had Manulla and Sataulla been in possession. It is not a correct proposition of law to lay down that a person who attempts to enforce a claim to property which he cannot substantiate, thereby creates the position that possession is with another, and the language used by the learned Judge is open to that construction. Moreover the case before the jury was, not that two parties went to the field prepared to fight. One side alleged that a mob cut their paddy and attacked them when they protested. The other side admitted an affray over the paddy cutting, gave no details of that affray, and merely claimed that the paddy belonged to them. The suggestion that both parties went prepared to fight is not based on evidence in the record. The direction as to the aggressive party is also confusing. If the jury found, as they did apparently find, that the land was the property of neither party, the legal position was that neither party had any right to use force in defence of the crop. The direction should have been that if the prosecution story as to the actual use of violence was correct, and if the appellants were not in possession, the appellants were not entitled to plead any right of defence of property in reply to the charges brought against them. Contra, if the jury found that the complainant's party attacked the others, the whole prosecution case failed, irrespective of who was in actual possession.

4. Lastly, if the jury held that the appellants were the owners of the crop, no right of private defence arose until its possession was endangered. If and when that right arose, it was a right limited by the provisions of the Penal Code, and the direction in the charge to the effect that if Sabel was held to be in possession, none of the appellants were guilty of any offence, is not a correct or comprehensive statement of law. We are therefore of opinion that the charge delivered by the learned Judge is bad on the ground that it contains misdirections of fact and law, and that the convictions should not be sustained. In the result this appeal is allowed. The convictions and sentences are set aside and the case remanded for retrial to the Court of Session. The appellants will continue on the same bail.

Rankin, C.J.

5. I agree.