

(2003) 10 MP CK 0025

In the Madhya Pradesh High Court

Case No : Criminal Appeal No. 1936 of 2002

Chittar Singh Lodhi and Others

APPELLANT

Vs

State of Madhya Pradesh

RESPONDENT

Date of Decision : 22-10-2003

Acts Referred:

Penal Code, 1860 (IPC) — Section 101, 104, 325, 34, 99

Citation : (2003) 4 MPHT 542 : (2004) 1 MPLJ 160

Hon'ble Judges : S.P. Khare, J

Bench : Single Bench

Advocate : Narendra Nikhare, for the Appellant; Sanjeev Shukla, Panel Lawyer, for the Respondent

Final Decision : Allowed

Judgement

S.P. Khare, J.

The appellants have been convicted u/s 325/34, IPC and sentenced to rigorous imprisonment for three years and to pay a fine of Rs. 1,000/-each.

The prosecution case was that on 14-6-2001 Bhujbal Singh (P.W. 1) was ploughing his land known as "Chandvarhar" at about 10.00 a.m. At that time accused Chittar Singh, Gokal Singh and Malti Bai came there. Accused Chittar Singh asked Bhujbal Singh (P.W. 1) as to why he was ploughing his land. Both sides claimed that the land belonged to them. Accused Chittar Singh is said to have caused injury to Bhujbal Singh (P.W. 1) with a Katarna. Accused Gokal is alleged to have dealt a blow of rod on him and accused Malti Bai caused injuries to him with a stick. The incident was witnessed by Smt. Shivrani (P.W. 2) and Gulai (P.W. 4). Bhujbal Singh (P.W. 1) lodged the report (Ex. P-1) at Sanodha Police Station on the same date at 12 noon and he was sent to the hospital for medical examination. After investigation the charge-sheet was filed.

The defence of the accused persons was that the land in dispute was in their possession and they had the right of private defence of property and person.

The Trial Court after appreciation of the evidence on record held that the accused persons in furtherance of their common intention voluntarily caused grievous hurt to Bhujbal Singh (P.W. 1) and, therefore, they have been convicted u/s 325/34, IPC.

In this appeal it is argued that the land in dispute was in possession of accused Gokal Singh and, therefore, Bhujbal Singh (P.W. 1) was committing an act of aggression while ploughing his land and, therefore, the accused persons had the right of private defence of property and person. A copy of order dated 16-1-2001 of the Court of Second Civil Judge, Class-II, Sagar has been produced which shows that Bhujbal Singh and three others had filed Civil Suit No. 156-A of 2000 and in that civil suit they had also submitted an application for temporary injunction. According to this order, Bhagwandas, who was father of the plaintiffs had executed a registered sale-deed dated 19-5-1975 in respect of the lands bearing old Khasra Nos. 166 and 164 and new Khasra Nos. 575 and 577 area 0.44 and 0.77 acres respectively. It has been further concluded in this order that these lands were in possession of accused Gokal. In the khasras the possession of these lands is recorded in the name of accused Gokal. By this order the defendants were restrained from selling the lands in dispute to any other person until the decision of the suit but no temporary injunction was granted in favour of the plaintiffs restraining defendant No. 1 Gokal from interfering with the possession of the plaintiffs. This was for the reason that defendant No. 1 Gokal was held to be in actual possession of the lands in dispute.

As stated above, the order of temporary injunction was passed on 16-1-2001 and the incident which gave rise to the criminal case took place on 14-6-2001. As the Civil Court had held in the order of the temporary injunction that accused Gokal was in actual possession of the lands, Bhujbal Singh (P.W. 1) could not have gone on the lands in dispute for ploughing them. The accused persons had the right to throw out the trespasser from their lands. Accused Chittar Singh is real brother of accused Gokal and accused Malti Bai is daughter of Gokal. The Trial Court has found that accused Malti Bai has also sustained injuries. It is borne out from the evidence of Dr. Sudhir Jain (D.W. 1). The medical report is Ex. D-5. It shows that Malti Bai had sustained one incised wound over dorsum of right forearm. It was 4.3 cms. in length and 1/2 cm. in width. This injury shows that the complainant was also armed with a sharp edged weapon.

From the evidence of Bhujbal Singh (P.W. 1), Smt. Shivrani (P.W. 2) and Gulai (P.W. 4) it is found that the accused persons have caused injuries to Bhujbal Singh (P.W. 1). The injuries sustained by Bhujbal Singh (P.W. 1) are given in the medical report (Ex. P-16) of Dr. C.K. Dubey (P.W. 15). There is no incised wound sustained by Bhujbal Singh (P.W. 1). Therefore, the prosecution case that accused Chittar Singh caused injuries to Bhujbal Singh (P.W. 1) by Katarna is not true. There was fracture of the left elbow of Bhujbal Singh (P.W. 1) and for this reason the accused persons have been convicted u/s 325/34, IPC. The other injuries sustained by Bhujbal Singh (P.W. 1) in this incident were of simple nature.

As discussed above the land in dispute was in possession of accused Gokal. There was registered sale-deed executed in the year 1975 by Bhagwandas, father of Bhujbal Singh (P.W. 1) in respect of the land in dispute. The name of accused Gokal was recorded in the khasra being in actual possession of the lands. In the order of the Civil Court referred above it was found that actual possession is of defendant No. 1 Gokal. Therefore, Bhujbal Singh (P.W. 1) was definitely an aggressor on the land in dispute on the date of incident. The accused persons had the right to resist and drive out the trespasser from their land. Accused Malti Bai sustained an incised wound during the course of the incident and therefore it is highly probable that this injury was caused to her by Bhujbal Singh (P.W. 1) or someone on his side. The accused persons had the right of private defence of property and person while causing injuries to Bhujbal Singh (P.W. 1). In *Subramani and Others Vs. State of Tamil Nadu*, the Supreme Court reiterated the principle that while it is true that in exercise of the right of private defence only such force may be used as may be necessary, but it is equally well settled that at a time when a person is faced with imminent peril of life and limb of himself or another, he is not expected to weigh in golden scales the precise force needed to repel the danger. Even if he, in the heat of the moment, carries his defence a little further than what would be necessary when calculated with precision and exactitude by a calm and unruffled mind, the law makes due allowance for it.

In the result the appeal is allowed. The conviction and sentence are set aside and the appellants are acquitted of the charge u/s 325/34, IPC.