

(2002) 02 MP CK 0056

In the Madhya Pradesh High Court

Case No : Criminal A. No. 1198 of 1989

Hanslal

APPELLANT

Vs

State of M.P.

RESPONDENT

Date of Decision : 22-02-2002

Acts Referred:

Penal Code, 1860 (IPC) — Section 294, 307, 323, 325, 326

Citation : (2002) CriLJ 3257

Hon'ble Judges : Saraswati Prasad Khare, J

Bench : Single Bench

**Advocate : Surendra Singh, J.S. Singh and S.P. Mahawar, for the Appellant;
Arup Das, P.L., for the Respondent**

Judgement

S.P. Khare, J.—Appellant-Hanslal has been convicted under Sections 326, 325 and 436, I.P.C. and sentenced to rigorous imprisonment for two years, three months and six months respectively.

2. It is not in dispute that accused-Hanslal is real brother of complainant-Girjabai (P.W. 3), Narbad (P.W. 2) is her husband and Krishna Kumar (P.W. 5) is her son. Girjabai had filed Civil Suit No. 246-A of 1987 in the Court of IIIrd Civil Judge, Class II, Balaghat against her brother Hanslal and two others for partition and separate possession of 4.12 acres of land of village Kosmi which she claimed to have been left by her father after his death 15 years ago. Khasra No. 57/1 area 0.09 acre is also included therein. This civil suit was filed on 7-12-1987. A certified copy of the plaint in that civil suit is Ex. D.7. These lands were jointly recorded in the names of Girjabai and Hanslal after the death of their father Tilakchand long back but on 18-6-1986 the Tehsildar struck out the name of Girjabai from the revenue record on the ground that she is not claiming any right on these lands. According to Girjabai she never relinquished her half share in these lands and she never executed any document in that behalf. She challenged the order of the Tehsildar by an appeal to the Sub-Divisional Officer but that appeal was dismissed on the ground of limitation on 25-8-1988.

3. The prosecution case is that on 28-6-1988 at about 11 a.m. accused-Hanslal and his two sons Bharatlal and Shriram came to the courtyard of the house of Girjabai (P.W. 3) in a bullock-cart and asked her "why she has filed the civil suit for partition of the lands." He started assaulting her, her husband Narbad (P.W. 2) and her sons Krishna Kumar (P.W. 5), Kapurchand (P.W. 1) and Tarachand (P.W. 4) with blunt portion of an axe and caused grievous injuries to them. He also set fire to her hut on Khasra No. 57/1 which she was using as a dwelling place and also for the custody of her property. Her son Kapurchand (P.W. 1) lodged the report Ex. P-1 at Balaghat Police Station. After investigation the charge-sheet under Sections 294, 325, 323, 307 and 436, I.P.C. was filed against Hanslal and his two sons and the case was committed to the Court of Session. There was a counter-case which was Sessions Case No. 69/1989 against Narbad, Girjabai, Kapurchand and Tarachand, Hanslal and his sons Bharatlal and Shriram had also sustained injuries in this incident. The counter-case ended in acquittal. According to the prosecution the accused persons in the present case were the aggressors.

4. Accused-Hanslal pleaded not guilty. He has set up the plea of private defence of property and person. According to him he and his two sons were ploughing the field bearing Khasra No. 57/1 which was in his actual possession and at that time Girjabai, Narbad, Kapurchand, Tarachand and Krishna Kumar came there and caused injuries to them by axe and lathis.

5. The trial Court after appreciation of the documentary and oral evidence adduced by both the sides negatived the plea of private defence and held that the accused had come to the courtyard of the house of Girjabai enraged by the civil suit filed by her and assaulted her, her husband and her sons. It has been held that the accused were not carrying on any agricultural operations on that date in the land Khasra No. 57/1 and there was no question of private defence of property and person. Thus the prosecution case that accused-Hanslal was the aggressor was upheld. It has been found that Kapurchand caused injuries to Hanslal and his sons in self-defence.

6. In this appeal it has been argued that accused-Hanslal was in actual possession of the land Khasra No. 57/1 and the incident took place on that land. It has been contended that Girjabai and her family members prevented accused-Hanslal from putting manure in the field and that led to this incident. According to the defence counsel even if a reasonable doubt is created on the point whether the appellant was the aggressor or he acted in exercise of his right of private defence of property and person he is entitled to acquittal.

7. Now there is no dispute that the incident of marpit did take place between both the parties. There were injuries on both the sides. The details of these injuries are as under as per evidence of Dr. Mukesh Shrivastava (P.W. 9) and Dr. K.K. Khosla (P.W. 11) and their medical reports Ex. P.4-A to Ex. P. 8-A and Ex. P. 11 to Ex. P. 17:--

1. Girjabai (P.W. 3)

1. A contusion with swelling with tenderness present on front of upper part of right thigh and right tendoachillis.
2. Diffuse swelling with restriction of movement with deformity present on left forearm with a lacerated wound present on dorsum of web of index finger and middle finger of left hand.
3. A diffuse swelling with tenderness present on dorso-lateral aspect of upper part of right forearm.

There was fracture of the head of the metacarpal bone.

2. Kapurchand (P.W. 1)

1. A lacerated wound size 3 cm. x 1 cm. x 1 cm. present on right side of scalp. Active bleeding was present.
2. Diffuse swelling with contusion present on dorsum of right arm.
3. An abrasion on right side of nose 1 cm. x 1/4 cm. x 1/4 cm. with diffuse swelling.
4. A contusion size 4 cm. x 2 cm. present on left shoulder with tenderness.
5. Diffuse swelling with tenderness present on dorsum of left wrist, lateral side of upper part of left knee and front of right knee.

3. Narbad (P.W. 2)

1. A lacerated wound size 2 cm. x 1 cm. x 1 cm. present on frontal region of mid of scalp caused by hard and blunt object.
2. A lacerated wound size 2 cm. x 1 cm. x 1 cm. present on right parietal bone caused by hard and blunt object.
3. An abrasion size 1 cm x 1 cm. x 1 cm. present on mid of dorsum of right forearm with diffuse swelling and tenderness in forearm with restriction of movements.
4. An abrasion size 1 cm. x 1 cm. present in mid of left forearm on dorsum aspect, restriction of movement with tenderness present.
5. An abrasion 1 cm. x 1 cm. on mid of front of right thigh with diffuse swelling around it.

There was fracture of both the bones of left forearm and ulna of right forearm.

4. Krishna Kumar (P.W. 5)

1. A lacerated wound present on front of mid of scalp -- size 6 cm. x 2 cm. x 1.5 cm., active bleeding was present, caused by hard and blunt object, duration within three hours.

There was fracture of both the parietal bones.

5. Tarachand (P.W. 41

1. A contusion with tenderness present on both scapular region size 1 cm. x 1 cm. to 2 cm. x 2 cm. caused by hard and blunt object, duration within three hours.

8. The injuries sustained by the accused, persons as per medical reports Ex. D-3 to Ex. D-5 are as under:--

1. Accused-Hanslal

1. A lacerated wound size 4.5 cm. x 1 cm. x 1 cm. present parallel to left eyebrow.

2. A lacerated wound size 5 cm. x 1 cm. x 1 cm. present on right side of frontal region of scalp.

3. A diffuse swelling with contusion present on dorso-lateral aspect of lower part of left forearm.

4. A linear contusion present below left scapular region size 5 cm. x 1.5 cm.

5. Pain and tenderness present on dorsum of right leg.

2. Accused-Bharatlal

1. A lacerated wound size 5 cm. x 2 cm. x 1 cm. present on right side of scalp.

2. A contusion size 5 cm. x 2 cm. present biceps region of left arm oblique in nature.

3. Accused-Shriram

1. Lacerated wound (L.W.) present on mid of scalp size 4 cm. x 2 cm. x 1 cm. Bleeding was present.

2. Diffuse swelling with tenderness with linear contusion -- size 2 cm. x 1 cm. present on left shoulder and left forearm on dorsum aspect.

There was no grievous injury on the accused persons.

9. The question is which party was really the aggressor. The evidence on record on this point has been scanned by this Court. Girjabai (P.W. 3) has deposed that she was putting wet clothes in the sun and. at that time Hanslal and his two sons came in her courtyard in a bullock-cart and assaulted her and the members of her family with the blunt portion of an axe. He asked her why she was filed civil suit against him for partition. He set fire to her hut. Her son Kapurchand snatched the lathi of Shriram and wielded it on the accused and his sons, in that process they might have sustained the injuries. In cross-examination she has stated that she was in actual possession of Khasra No. 57/1 for the last ten years and there was entry of her name also with Hanslal in the revenue papers but

Hanslal got her name deleted and that was the reason she filed the civil suit. She has denied that Hanslal and his two sons were working in the field and then this incident took place. To the same effect is the evidence of Narbad (P.W. 2), Kapurchand (P.W. 1), Tarachand (P.W. 4) and Krishna Kumar (P.W. 5). These witnesses have repelled the suggestion that the incident took place in the field.

10. Tejlal Patwari (D.W. 1) has been examined in defence. According to him in the Khasra for the year 1988 the name of Hanslal alone is recorded on Khasra No. 57/ 1. In cross-examination he has admitted that the names of Girjabai and Hanslal both were recorded on this land in the Khasra of the years prior to 1987-88. It is obvious that the name of Girjabai stood deleted by the order of the Tehsildar passed on 18-6-1986.

11. From the evidence of both the sides it is clear that Girjabai and Hanslal both being the heirs of their father got his lands and these were jointly recorded in their names. Both were in joint possession of the lands and the dispute between the parties arose when the name of Girjabai was deleted from the revenue papers by the Tehsildar. Girjabai filed the civil suit for partition on 7-12-1987 and this caused annoyance to her brother Hanslal and enraged by the institution of the civil suit he went to the courtyard of her house with her sons and caused injuries to her and the members of her family. The injuries sustained by Girjabai, Narbad and Krishna Kumar were grievous. These were caused by blunt portion of an axe by accused-Hanslal. The incident did not take place in the field of Khasra No. 57/1. There is no evidence direct or circumstantial to that effect. The defence plea is not probable. The incident took place in the courtyard of the house of Girjabai and the appellant was the aggressor. The plea of private defence of property and person has been rightly negatived by the trial Court. The injuries sustained by the appellant and his sons have been explained by the prosecution witnesses.

12. Assuming that the incident took place in the field of Khasra No. 57/1, as contended on behalf of the defence, it is clear that this land was the joint property and in joint possession of Girjabai and Hanslal after the death of their father and it was jointly recorded in the names of both. Each had the right to every inch of the land of that Khashra number and none could claim exclusive possession on that land until partition was effected. The deletion of the name of Girjabai from the revenue papers in the year 1986 could not have the effect of divesting her from joint possession on that land. That could be done only through due process of law. There is presumption of continuity of possession of both. Therefore, Hanslal alone could not assert his exclusive possession on this land on the date of incident so as to throw out his sister and her family members from that land. A close look at the injuries sustained by both the sides shows that the injuries of the persons on the complainant side were more in number and far more serious than the (injuries of the) persons on the side of the accused and that is also an indicator which party was the aggressor. The right of private defence is available only to one who is suddenly confronted with immediate

necessity of averting an impending danger not of his own creation. Right of private defence cannot be claimed against an act which is itself in exercise of the right of private defence. In order to find out whether the right of private defence was available to an accused, the entire incident should be examined with care and viewed in its proper setting. In the present case there was no unlawful aggression by the complainant party which could be justifiably repelled by the accused. The right to defend cannot include the right to offend. The essential basic character of this right is preventive and not retributive. The defence version is not probable.

13. The conviction u/s 326, I.P.C. is altered to Section 325, I.P.C. as blunt part of the axe was used in causing injuries to Krishna Kumar. The conviction u/s 436, I.P.C. is set aside as it is not proved that the hut was being used as a dwelling place or for custody of property. The conviction of the appellant u/s 325, I.P.C. for voluntarily causing grievous hurt to Girjabai and Narbad is maintained and he is further convicted u/s 325, I.P.C. for voluntarily causing grievous hurt to Krishna Kumar. Now as more than 13 years have passed since the date of incident, the appellant is sentenced to rigorous imprisonment for one year each for causing grievous hurt to Narbad, Girjabai and Krishna Kumar. The sentences will run concurrently. The revision filed by the complainant for enhancement of the sentence is rejected.

_____ Name of accused- Convicted under Sentence
awarded appellant section _____

_____ Jaswant Singh
376(1) IPC Seven years" RI and to pay fine of Rs. 10,000/-, in default of payment of fine to further undergo RI for three months. 324 IPC Six months" RI. 323 IPC Two months" RI.