
(1962) 08 MP CK 0027
In the Madhya Pradesh High Court

Jaganlal Anjordas

APPELLANT

Vs

The State

RESPONDENT

Date of Decision : 31-08-1962

Acts Referred:

Penal Code, 1860 (IPC) — Section 149, 302, 323, 325, 34

Citation : (1963) CriLJ 570 : (1964) ILR (MP) 419 : (1963) JLJ 889

Hon'ble Judges : Shiv Dayal, J;S.P. Bhargava, J

Bench : Division Bench

Judgement

Shiv Dayal, J.—Field No. 201 in Patwari Circle No. 36 of village Tegnagarh, tahsil Mungeli, was originally of Baisakhu (P.W. 2) and his brother Ramlal alias Nanki (P.W. 1). They sold it to Rungsa of village Jhulna on June 3, 1952. Rungsa was their brother-in-law (husband of their sister Chaitibai). After Rungsa's death this property devolved on Chaitibai. By a sale deed dated June 3, 1960, (Ex. P-2), Chaitibai sold this land to Baisakhu (P.W. 1) and his wife Mst Jadrabai. According to the prosecution this field was in possession of Baisakhu and it was cultivated by him and his brother. The crop that was standing on November 6, 1960, had been sown by Baisakhu and his brother, it was being harvested on that day. Baisakhu (P.W. 2), Ramlal (P.W. 1) and Jaitram, husband of Baisakhia (P.W. 16) are brothers, Chaitibai was their sister.

2. On November 6, 1960, the crop was being harvested by Baisakhu, Ramlal, Chaitibai and their labourers. Baisakhia (P.W. 16) was also there in the field. Head loads were tied and kept in the field. Anjordas accompanied by his son Jaganlal and 10 or 15 other persons reached the field at about 10 hours. Jaganlal and his father Aniordas had a "lathi" and a "Tabbal". Others are said to have carried "lathis" and "scythes" with them. In the party of the accused there were four or five women also who were carrying scythes with them. Jaganlal and Anjordas asked the other members of their party to remove the headloads. Some of them started removing the headloads and some of them started cutting the crop. The companions of the accused in this way carried the headloads twice.

Ramlal and Baisakhu questioned Anjordas about this conduct of theirs and asked him why he was taking away their crop. On this Anjordas replied that the field had been allotted to him in his Chak (block). Ramlal and Baisakhu expressed their ignorance about that and said that the paddy had been sown by them and, therefore, Anjordas had no right to remove the harvested crop. On this Anjordas struck a lathi blow on the head of Ramlal. It caused bleeding. In the mean time Mst. Chaitibai came running and asked why her brother was being beaten. She stood between Ramlal and Anjordas. She also abused Anjordas. Ramlal slipped away from that field. Anjordas and Jaganlal beat Chaitibai with their lathes. She fell down. The father and son, however, continued beating her even after she had fallen down. The blows struck her head. This beating resulted in her death on the spot.

3. Jaganlal accused was tried by the Additional Sessions Judge, Bilaspur, for the offence u/s 302, read with Section 34 of the Penal Code. Anjordas since died. The Trial Judge found the accused guilty of the offence charged, but convicted him u/s 323 of the Penal Code and sentenced him to rigorous imprisonment for six months and to pay a fine of Rs. 100/-. Against his conviction Jaganlal has preferred Criminal Appeal No. 26 of 1962, while the State has filed Criminal Appeal No. 91 of 1962, praying that the conviction of the accused be altered to one u/s 302, read with Section 34 of the Penal Code.

4. The defence was that there was "Chakbandi" (consolidation of holding) in that village. In those proceedings this field (No. 201) was allotted to Jaganlal accused and his mother Pilabai. A "Patta" had also been granted to the allottees by the Revenue authorities. It was asserted by the defence that they had also been given possession of the field and that they had sown paddy crop, but the complainant's party wanted to take forcible possession of their crop. However, Jaganlal accused pleaded alibi, denying that he caused any hurt to Mst. Chaitibai and he did not know how she was hurt.

5. Mr. Rajendra Singh places reliance on the statement of Chunnilal Patwari (P.W. 10) and contends that the allottee of the field had been in possession. We do not find any such statement to have been made by the Patwari. All that he says is that on the basis of the record of the consolidation proceedings this field was entered in the name of Pilabai, mother of the accused, and he could not say whether on the date of the occurrence she was in possession. In the Court of Session he did not depose that Pilabai was in possession. (After discussing the evidence the judgment proceeds.) Thus there is no "iota" of evidence to show that Jaganlal and his mother had been put in physical possession of the disputed land at any time. No defence evidence was produced and no prosecution witness says so. It must irresistibly be concluded that the field was in physical possession of Baisakhu and his wife, and further that the paddy crop had been sown by them which was harvested on the date of the occurrence by them. To put the case of the appellant at the highest, all that can be said is that the field had been allotted to him and he had acquired title to be put in possession.

6. It is maintained by Mr. Rajendrasingh that the party of the accused believed bona fide that they were in possession and it was for the purpose of defending that possession that they used force, if it be held that they actually used force. On that basis right of private defence is claimed. In our opinion, the accused had no right of private defence in the circumstances of this case. In the exercise of right of private defence it must be established that the accused was in physical possession so that he was entitled to resist or repel aggression in order to maintain that right. If a party is forced to maintain or defend his right, it cannot be said that he was determined to vindicate his right by show of force or use of force so that the right of private defence was not available to him. When a person defends his possession, even by using the minimum force necessary, it cannot be described as enforcing any right or supposed right.

On the other hand, no person is entitled to take the law in his own hand and vindicate his "right to possession" of any property by resorting to criminal force. The distinction is clear; one is the right to defend the property and person, while the other is to enforce any right or supposed right. The former cannot be deemed to be enforcing any right or supposed right. The latter is not permissible under the law. All we find from what has been said above is that the accused and his father went to the disputed field in order to enforce their right and to take possession not only of the field, but also of the crop which had not been sown by them, but had been sown by others and was being harvested by others, and in doing so there was a premeditated plan to use violence if they were obstructed in removing the harvested crop. In our judgment, therefore, the accused had no right of private defence. Ramlal and Chaitibai were fully justified in challenging or questioning the accused and Anjordan when they were getting removed the head-loads kept on the field by the complainant's party.

7. The learned Counsel argued that there is no culpability unless the guilty act is combined with a guilty mind. In the absence of "mens rea" the accused committed no offence. It is urged that if the accused bona fide believed that he was entitled to take possession of the field because of its having fallen to his lot in the consolidation proceedings, even though he may be held to be not correct in the eye of law, he could not be said to have committed the act with a guilty mind. In our opinion, the circumstances in this case are quite clear. There had been allotment of the field in favour of the accused and his mother. It is also proved that he was asserting his claim saying meaning that it had been allotted to him in the course of consolidation. But it is not possible to hold that there was any bona fide claim for endeavouring to take possession of the field, or to remove the harvested crop by force.

8. It is strenuously argued by Mr. Rajendrasingh that the explanation given by the accused in his statement u/s 342, Criminal Procedure Code, is sufficient to discharge the onus on the accused. Reliance is placed on the observations of the Supreme Court in *State of Maharashtra Vs. Laxman Jairam*, , in which the pronouncement of their Lordships in *C.S.D. Swamy Vs. The State*, , was

explained. In the last mentioned case it was observed:

In this case, no acceptable evidence, beyond the bare statements of the accused, has been adduced to show that the contrary of what has been proved by the prosecution, has been established, because the requirement of the section is that the accused person shall be presumed to be guilty of criminal misconduct in the discharge of his official duties "unless the contrary is proved". The words of the statute are peremptory, and the burden must lie all the time on the accused to prove the contrary". These observations were explained in *State of Maharashtra Vs. Laxman Jairam*, as follows:

All that the learned Judge there meant to say was that the evidence of the statement of the accused in the circumstances of that case was not sufficient to discharge the onus but that does not mean that in no case can the statement of an accused person be taken to be sufficient for the purpose of discharging the onus if a statute places the onus on him. u/s 342 of the Criminal Procedure Code the Court has the power to examine the accused so as to enable him to explain any circumstance appearing in evidence against him. Under Sub-section (3) of that section the answers given by an accused person may be taken into consideration in such enquiry or trial. The object of examining u/s 342 therefore is to give the accused an opportunity to explain the case made against him and that statement can be taken into consideration in judging the innocence or guilt of the person so accused.

We do not see how those observations help the accused in the present case. We find ourselves quite unable to accept the contention that the bare statement of the accused will by itself in every case exonerate him of the liability just because he says that he "bona fide" believed the land to be his or to be in his possession, irrespective of whether this assertion is true or false. It is one thing to say that the statement of the accused can be taken into account and may be accepted by the Court and that it must not be completely ignored simply because there is no other evidence to corroborate it, but it is quite another to say that the explanation coming forth in his statement u/s 342 must always be accepted. In the present case, for the reasons already stated, we reject the explanation given by the accused and also the so-called "bona fide" claim made by him.

9. It is then contended for the accused that he is not responsible for the act of his father. According to the prosecution evidence both the accused and his father struck "lathi" blows on Mst. Chaitibai. This; is a clear case which attracts the provisions of Section 34 of the Penal Code. There is no escape from the conclusion that the accused and his father went to the disputed field with the common intention that they would take its possession and also remove the harvested crop and, further, they would use force, if anybody obstructed or questioned them. It was in furtherance of this common intention that Ramlal was hit by Anjordan and Chaitibai was belabored by both the father and the son. They were, therefore, equally liable, irrespective of the number of blows that they might have individually dealt on the unfortunate woman. Here preconcert and

premeditation are amply made out from the circumstances. It is not necessary to look for direct evidence on that fact. Such evidence is invariably not available. In our opinion the decision in Ram Autar and Others Vs. State, , does not apply to this case.

10. Having said this much it remains to be seen of what offence the accused must be held guilty. It is undoubted law that with the aid of Section 34 a person is liable for the act which was committed if there was a common intention to commit that criminal act. To attract the operation of Section 34 and fix constructive guilt on each of the persons who participated in the criminal act, it must be shown that there was a common intention to do that act, although those persons might have taken different parts in the commission of that crime, But Section 34 does not deal with the liability of persons for an offence which is "likely" to be committed in the course of what was intended by them. There the liability is limited to the criminal act which they intended to commit, when that act is actually committed. Knowledge that an offence is likely to be committed is not what is contemplated by Section 34 and in this respect it differs from Section 149 of the Penal Code. Knowledge of a likely result does, not amount to an intention to bring about that result. Although knowledge of a likely result and the actual result may in some cases justify the determination of the intention of the actual doer, it is to be determined from the circumstances of each case whether the intention of the actual doer was shared by others and what that common intention actually was. See the observations in Nazir and Others Vs. Emperor, .

11. From the circumstances of the present case and the material on record all that can be inferred is that the accused and his father had a common intention to take possession of the field by using force and also to remove the harvested crop by use of force, if necessary. But it will be too much to jump to the conclusion that they intended to cause the death of anybody. In this context it will be pertinent to note that according to the statement of Dr. Laxmichand (P.W. 4), who held the autopsy on the dead body of Mst. Chaitibai, the cause of death was hemorrhage which resulted from the rupture of the spleen and the spleen was ruptured because of the fracture of the 6th, 7th and 8th ribs. This shows that the "lathi" blows were dealt on the chest region of Chaitibai. Although it is true that there were contusions in the head region, they might have been caused when the woman fell down on the ground, Having given a considered thought we are of the opinion that it will not be safe to impute common intention to cause death, but there was undoubtedly a common intention to cause grievous hurt. We, therefore, hold that Jaganlal accused is guilty of the offence u/s 325 read with Section 34 of the Penal Code.

12. As regards sentence Mr. Rajendra Singh wants us to take into consideration the period for which the accused was on trial. But we cannot ignore the fact that the accused and his father mercilessly beat the woman who was defenseless and who was merely questioning them as to why they were beating her brother. Having in view all the circumstances of the case, we think the ends of justice

would be met if the accused is sentenced to three years" rigorous imprisonment.

13. Criminal Appeal No. 26 of 1962, (Jaganlal v. State), is dismissed.

14. Criminal Appeal No. 91 of 1962 (State v. Jaganlal) is partly allowed. The conviction of accused Jaganlal u/s 323 is altered to one u/s 325/34 of the Penal Code and he is sentenced to three years" rigorous imprisonment. The sentence of fine imposed by the Trial Judge being unnecessary, is set aside.