
(1923) 03 PAT CK 0001
In the Patna High Court

Lalji Singh and Others and Nareshi Singh and Others APPELLANT
Vs
Emperor RESPONDENT

Date of Decision : 12-03-1923

Acts Referred:

Penal Code, 1860 (IPC) — Section 141, 147, 148, 149, 302

Citation : 82 Ind. Cas. 156

Hon'ble Judges : B.K. Mullick, J;Adami, J

Bench : Division Bench

Judgement

B.K. Mullick, J.—About 8 A.M. on the 11th August, 1922, a serious fight took place between the inhabitants of Mauza Gopalpur on the one hand and Mauzas Chainpurwa and Naraon on the other resulting in the death of five men, namely, Doman Ahir, Mahabir Ahir, Sheogulam Ahir, Jangi Ahir and Bhirgu Mahto on the Gopalpur side and three men, namely, Deonandan Singh, Kamla Singh and Deepan Singh on the other side. Among the wounded were also Mukhram Singh, Kamla Singh, Prem Narain Singh, Pokhan Ahir and. Ambica Ahir on the Gopalpur side and Narayan Singh and Sheobaran Singh on the Chainpurwa and Naraon side.

2. Gopalpur, Ghainpurwa and Naraon are all villages within the jurisdiction of Police Station Garka, which is six miles from Gopalpur, but instead of going to their own Police Station Mukhram Singh of Gopalpur and Ram Andeshi Singh of Chainpurwa went by train to Chapra and appeared at the Police Station there at 1-15 P.M. and lodged First Informations giving their respective versions of the occurrence.

3. Mukhram Singh's information was to the effect that nine buffaloes and cows belonging to Birchi Singh of Chainpurwa and Lalji Singh of Naraon had trespassed into his maize and raher field and that while he accompanied by his co-villagers, Bhirgu Mahto, Prem Singh and Narsing was driving them towards the pound at Santa, 60 to 70 men of the opposite party armed with lathis, spears, garasas and pherasas, set upon them and rescued the cattle, and in the

course of the attack caused injuries to the persons mentioned above.

4. Ram Andeshi Singh's account was that owing to long standing enmity some Ahirs of Gopalpur were cutting Deonandari Singh's paddy, that Deonandan Singh and his son Kamla succeeded in catching an Ahir named Binda, that thereupon 100 to 150 men from Gopalpur came up and attacked Deonandan and Kamla, who were re-enforced by a number of Chainpurwa and Naraon men and that a fight resulted in the course of which Deonandan and others of his side received serious injuries and Binda was rescued. Deonandan's paddy field in question is about 300 steps from the Local Board Road to Santa which runs north and south and separates Naraon from Gopalpur. Mukhram's maize field is a little to the south of the road; to the west of it, is the paddy field of one Chamru and to the west of it again is the orchard of Mukha Singh; north of this orchard are the fields of Jangi Ahir, Chirkut Ahir and Pokhan Ahir.

5. The Police on arrival in the village on the night of the 11th August found copious marks of blood in the orchard and in the parti fields of Chirkut and Pokhan. It was conclusively proved at the trial that the fighting; took place in these fields and that the casualties occurred there. On the other side of the road in the field of one Rambhajan the Police found marks of the trampling of many feet and north-west of this field is the orchard of Pertap Singh, where, according to the Gopalpur men, their assailants halted after the fight.

6. On the Gopalpur side Doman, Mahabir and Sheogulam are alleged to have died on the spot where they fell. As for Bhirgu and Jangi they were taken by train to Chapra by Mukhram and some others and their dying declarations were recorded in hospital at 2-25 and 2-40 p.m. respectively and they died there later in the day.

7. By the same train went Ram Andeshi with Deonandan's body and with Kamla and Sheobaran, two of the injured men. Kamla's dying declaration was Recorded in Chapra hospital at 2-35 P.M. and he also died a few hours later. Sheobaran also made a dying declaration but he recovered and is one of the Chainpurwa accused.

8. It appears that the train got into Chapra some time between 11 and 12 and that Mukhram went straightway to two Mukhtars, named Sukhdeo Narain and Ram Lal. The former prepared a draft complaint which the latter copied out and presented before the Deputy Magistrate of Chapra. The other side did not file any complaint, but both parties appeared at 1-15 P.M. at the Police Station and lodged formal First Informations. Maulvi Zahiruddin, the Sub-Inspector of Garkha, who happened to be at that time at the Chapra Police Station on some business, recorded the statement of Mukhram Singh while the Sub-Inspector of Chapra recorded the statement of Ram Andeshi, and a number of accused on either side were arrested by the Police immediately after these First Informations were recorded.

9. After recording the First Information, Zahiruddin appears to have gone by

motor car to Santa and to have found at the Railway Station the dead body of Deepan Singh one of the Chainpurwa men which the Chainpurwa men were just taking to Chapra. From the Railway Station he went by boat to Gopalpur and found every house in the village deserted by the male occupants with the exception of the chaukidars.

10. The result of the Police investigation was that the Sub-Inspector found that Mukhram Singh's information was substantially true and on the 6th September, 1922, he sent up for trial 22 men from Chainpurwa and Naraon for offences under Sections 147, 148 and 302 read with 149, Indian Penal Code, but his superior officers being of opinion that the accused in the counter-case should also be sent up for trial he on the 18th October, sent up 19 of the Gopalpur men for trial for similar offences.

11. The Sessions Judge began the trial of the former case on the 3rd January, 1923, and concluded the hearing on the 16th January. He began the other case on the 23rd January and concluded the hearing on the 31st January. On the 3rd February, 1923, he delivered judgment in both cases. Out of the 20 men on the Chainpurwa and Naraon side, who were committed for trial, the Sessions Judge acquitted five and sentenced the remainder u/s 302 read with Section 149, Indian Penal Code as follows: Narayan Singh and Lalji Singh to death; and Ram Andeshi Singh, Birchi Singh, Rambaran Singh, Suraj Singh, Sheobaran Singh, Hazari Singh, Sheonandan Singh, Khuba Ahir, Naresh Singh, Sahdeo Singh, Chanderdeo Tewari and Jwala Singh to transportation for life. Out of the 18 men in the counter-case the learned Judge acquitted nine and sentenced the remainder u/s 302 read with Section 149, Indian Penal Code, as follows: Nareshi Singh to death, and Kamla Singh and Mukhram Singh, Narsingh Singh, Prem Narain Singh, Subhag Singh, Pokhan Ahir, Ambika Ahir and Jamuna Singh to transportation for life.

12. The accused in the former case have preferred Appeal No. 20 (Death Reference No. 6) and those in the latter have preferred Appeals Nos. 21 and 22 of 1923 (Death Reference No. 7 of 1923).

13. Before proceeding to deal with each appeal separately, it is necessary to observe that neither the Public Prosecutor nor the learned Judge nor in one case the Assessors seem to have believed the respective accounts of either party regarding the origin of the fight. The Police were inclined to believe the "cherai" (grazing) story but in the Sessions Court the Public Prosecutor appears to have boldly told the Court that he would not support either that story or the paddy cutting story and he set up altogether a new theory, namely, that both sides by agreement had fought a pitched battle. The learned Judge has accepted that view with the result that a situation of some difficulty has arisen, before us.

14. In the case against the Chainpurwa and Naraon men, the accused cross examined the prosecution witnesses in order to show that their story as to the grazing and the capture of cattle was false, but they did not call any evidence to

show that their own account as to the paddy cutting was true. Some of them, however, went to considerable trouble to call evidence to prove alibis.

15. In the counter-case, the Gopalpur men took the same course and one of the Assessors was inclined to believe the story of paddy cutting set up by Ram Andeshi.

16. Before us the learned Counsel for the appellants in both appeals have had a somewhat easy task in overthrowing the finding of the learned Judge that there was a premeditated and preconcerted fight, for the simple reason that there is no evidence whatsoever upon which such a finding can be based. The learned Judge in the case against the Chainpurwa men relies on the evidence of prosecution witness Sukan Ahir, but that evidence, in my opinion, proves very little. It merely shows that the two sides were at enmity with each other and that a fight did take place. It altogether fails to show how the fight originated and it cannot warrant the inference that the parties turned out by agreement to have a fight merely for the sake of fighting.

17. Mr. Hasan Imam on behalf of the Chainpurwa and Naraon men and Mr. Manuk on behalf of the Gopalpur men, therefore, both contend that as the learned Judge's finding cannot be supported and as he himself has disbelieved the prosecution story in both cases the convictions cannot possibly be maintained.

18. The learned Government Advocate, however, takes up the following position. He agrees with the Police in accepting the cherai theory and contends that the conviction of the Chainpurwa and Naraon men is correct on the ground that they formed an unlawful assembly with the common object of assaulting the opposite party who had lawfully seized their cattle.

19. With regard to the counter-case, the learned Government Advocate admits that the allegation of paddy cutting is false, but he does not accept Mr. Manuk's contention that the Gopalpur men acted in the exercise of the right of private defence of person and property. The learned Government Advocate contends that in this case the right of private defence did not arise and that the Gopalpur men went to the assistance of Mukhram Singh not for the purpose of defending him but for the purpose of having a trial of strength with their enemies. It is obvious, therefore, that the Crown has an easier task in Appeal No. 20 of 1923 than in Appeals Nos. 21 and 22.

20. I propose now to discuss the evidence in Appeal No. 20 and the connected Death Reference No. 6 of 1923.

21. [After discussing the evidence His Lordship concluded:]

22. In these circumstances I agree with the Police in accepting the story told by the Gopalpur men as to the origin of the riot.

23. The evidence in the case conclusively shows that there was enmity between

Askirit Singh of Gopalpur and Ganesh Singh of Naraon and generally between the residents of the two villages and the nature of the injuries found by the Civil Surgeon upon the eight men killed in the fight clearly shows the deadly nature of the contest. Death in every case was due to injury in a vital part such as the chest, or the stomach, or the head and caused by a weapon such as a spear or an axe and there can be no doubt that the offences of murder u/s 302, Indian Penal Code, and rioting accompanied with murder u/s 302 read with Section 149, Indian Penal Code have been committed.

24. It remains to consider which, if any, of the appellants were members of the riot, and it is necessary, therefore, to examine the evidence against each of the accused.

25. [After examining evidence against each accused and finding which of them were members of the riot His Lordship proceeded as follows;--]

26. It now remains to consider the sentences. The learned Judge has sentenced, Lalji and Narain Singh to death on the ground that they were the leaders. Now there is nothing to show that Narain took any active part. Mukhram and Prem Narain state that he was armed with a garasa and Bhirgu mentions him in his dying declaration; but he certainly cannot be placed in the same category as Lalji Singh who appears to have taken a leading part in the attack. In my opinion, Narain Singh does not deserve a sentence of death any more than many of his co-appellants who have been sentenced to transportation for life. The sentence of death passed upon him must, therefore, in my opinion, be set aside and altered to one of transportation for life.

27. With regard to Lalji, he certainly was a leader but Naresh and Sheodani Singh appear "to have been just as active in using their weapons and if it could be quite certain that the witnesses were in a position to state what part the various appellants took in the attack it might have been possible to confirm the sentence of death passed upon Lalji; but it is extremely doubtful whether in a mob of 60 to 70 men the prosecution witnesses even as regards their own injuries can be trusted as to the specific acts ascribed to the various accused and I think it would be safer to put all in the same category and to sentence them to transportation for life. The sentence of death passed upon Lalji will, therefore, be set aside and altered to one of transportation for life.

28. There can be no doubt that the injuries caused were such that the offence was one within Section 302, Indian Penal Code, and no other sentence but that of transportation for life can be passed in this case.

29. The result is that the appeal of Jwala is allowed and we direct that he be acquitted and set at liberty.

30. The sentences on Lalji and Narain are modified as indicated above to transportation for life.

31. The appeals of the remaining appellants Khuba Raut, Ram Andeshi,

Sheobaran, Birchi, Suraj, Rambaran, Hazari, Sheonandan Singh, Sahadev Singh, Naresh, Sheodeni and Chanderdeo Tewari are dismissed.

Death Reference No. 7 of 1923

With

Cr. A. Nos. 21 and 22 of 1923.

32. In this case out of 17 men from Gopalpur whom the Police sent up for trial under the orders of the Superintendent of Police and against their own judgment, only ten were convicted. Out of these ten men the appellant Ram Nareshi alias Nareshi has been sentenced to death and the remainder have been sentenced to transportation for life, u/s 302 read with Section 149, Indian Penal Code.

33. The learned Judge states that he is not in a position to find which of the accused caused the deaths of Deonandan Singh, Kamla Singh and Deepan Singh, but he finds that one or more member's of the unlawful assembly committed murder by killing these men in prosecution of the common object of the unlawful assembly.

34. As in the counter-case the learned Judge has declined to accept the story that Deonandan and Kamla caught a number of Ahirs of Gopalpur cutting their paddy. The Gopalpur men, who were the accused in this case, have given no substantive evidence in proof of their allegation that the riot originated out of a seizure of cattle by Mukhram Singh, but fortunately for them the prosecution have put upon the record the evidence given by the appellants in the counter-case when they were prosecution witnesses. It is clear from that evidence and from the reasoning of the learned Judge that the account given by the Gopalpur men as to the origin of the riot is substantially correct.

35. There is no evidence in support of the theory put forward by the learned Judge that the Naraon and the Chainpurwa men came to remonstrate with the Gopalpur men as to the cattle grazing of the previous day and of previous acts of aggression and that a quarrel broke out in which both parties joined and engaged in something in the nature of a pitched battle.

36. The learned Government Advocate, however, contends that accepting that the riot originated as alleged by the Gopalpur men in the seizure of cattle by Mukhram Singh yet this is a case in which no right of private defence can be claimed by the Gopalpur men. He contends that in taking the cattle to the orchard of Mukha Singh and collecting re-inforcement and in awaiting the attack, of the Chainpurwa and Naraon men the appellants in this case were clearly members, of an unlawful assembly, and he relies strongly upon *Kabir-ud-din v. King-Emperor* 35 C. 368 : 7 C.L.J. 359 : 12 C.W.N. 384 : 7 Cri. L.J. 258 : 3 M.L.T. 385. In that case the learned Judges appear to have approved of the following statement of the law as given in the Sessions Judge's charge to the Jury: "In laying down the law I rely first, on the clear language of Section 141(4), which refers to an actual right as well as a supposed one, and then on a long series of

rulings which begin with *Queen v. Jeolall* 7.W.R. 3d Cr. and end with *Anant Pandit v. Madhusudan Mandal* 26 C. 574 : 13 Ind, Dec. 969. There can, I tell you, be no right of private defence, either on one side or on the other, where both parties are evidently aware of what is likely to happen and turn out in force. The right of private defence cannot be pleaded by persons who expecting to be attacked go out of their way to court an attack. When the parties of the complainant and accused are prepared to fight, it is immaterial who was the first to attack, unless it be shown that the accused were acting in the exercise of the right of private defence. If the accused--it was held by the Judges at Allahabad not many years ago, see *Queen-Empress v. Prag Dat* 20 A. 459; A.W.N. (1898) 117 : 9 Ind. Dec. 654--were determined to vindicate their supposed rights and engaged in a fight with men equally determined to vindicate them no question of private defence can arise. It comes to this simply, that our law does not permit rival claimants to enter in cold blood into battle to settle a dispute which can be settled in a lawful manner." And the learned Judges of the Calcutta High Court draw attention to the words of Holloway, J., in *Madras High Court Proceedings*, 8th January. 1873, No. 59 7 M.H.C.R. App. XXXV (35); 1 Weir 58 where that learned Judge observes as follows: "The natural tendency of the law of all civilised States is to restrict within constantly narrowing limits the right of self help, and it is certain that no other principle can be safely applied to a country like this."

37. It is clear, however, that the decision in *Kabiruddin's Case* 35 C. 368 : 7 C.L.J. 359 : 12 C.W.N. 384 : 7 Cr. L.J. 258 : 3 M.L.T. 385 was founded on the fact that the question of possession was in dispute and that the appellants before their Lordships were members of an unlawful assembly, firstly, because they were attempting to enforce a right or a supposed right by violence, and, secondly, because there was sufficient time to inform the authorities. Where, however, possession is undisputed or where there is no time to seek the assistance of the authorities, I cannot agree that there is any obligation upon a person entitled to exercise the right of private defence and to defend his person or his property to retire from the field merely because his assailant threatens him with violence. I see nothing wrong on the part of the Gopalpur men in awaiting the coming of their antagonists and in maintaining their possession of the cattle which they had lawfully seized. The law did not require them to retire as soon as Deonandan and Lalji went away to fetch re-enforcements. The learned Government Advocate seems to suggest that it was their duty to release the cattle and to complain to the authorities, but I entirely disagree with him. He next contends that it was not their intention to impound the cattle at all; and that their object was merely to fight for fighting's sake; and he relies on the circumstance that they remained in Mukha Singh's orchard for an hour before the fight began. There is, however, no clear evidence in support of the theory that the common object of the Gopalpur men was not to resist aggression but to resort to the ordeal of battle. The facts are equally consistent with their allegation that they did intend to take the cattle by the Local Board Road and that as it passes Chainpurwa it was necessary for them to collect men in order to

resist a possible attack. Something might perhaps have been said for the learned Government Advocate's theory if they had let the cattle go and had then assembled on Mukha Singh's orchard and given a challenge to the other side to come there and fight; but the evidence does not disclose any such conduct and as the rescue of the cattle amounted to theft under the Indian Penal Code, apart from an offence under the Cattle Trespass Act, the right of private defence of property was, in my opinion, clearly available to them. As a matter of fact the cattle escaped in the course of the fight and, in my opinion, it is established that the Gopalpur men did intend to maintain their possession of them.

38. Again, if the Chainpurwa and Naraon men entered upon Mukha Singh's plot without the consent of the Gopalpur men and with the object of committing an assault then they were guilty of the offence of criminal trespass and the Gopalpur men had the right to eject them by such force as was necessary. It would have been otherwise if the entry was made in answer to a challenge to fight, but of this there is no evidence.

39. I think then that the appellants are entitled to plead Section 97 of the Indian Penal Code and the only question is whether the force used was excessive.

40. Having regard to the savage nature of the attack and to the fact that no less than five of their men were killed I cannot say that the right of private defence was exceeded by the appellants. As was observed by Jenkins, C.J., in *Bhut Nath Dome v. Emperor* 3 Ind. Cas. 867 : 13 C.W.N. 1180 : 10 Cri. L.J. 391 a man acting under an apprehension of death cannot be expected to judge too nicely the force of his own blow; and the Common Law of England which is substantially also our law on this topic says that he is not bound to modulate his defence step by step according to the attack before there is reason to believe that the attack is over; he is not obliged to retreat but may pursue his adversary till he finds himself out of danger and if in a conflict between them he happens to kill such killing is justifiable.

41. The evidence is that the attack was commenced by the Chainpurwa and Naraon men and in my opinion the Gopalpur men did not use unnecessary force in repelling it.

42. The learned Counsel for the appellants in one part of his argument seemed to suggest that once the right of private defence is conceded there can be no conviction u/s 302 read with Section 149, Indian Penal Code. He contended that individuals might perhaps be convicted of exceeding the right of private defence but there could be no conviction of the other members or the assembly of that excess by implication, and he relied on *Kunja Bhuniya v. Emperor* 15 Ind. Cas. 481 : 39 C. 896 : 16 C.W.N. 1053 : 13 Cr. L.J. 481. I do not, however, understand that case to lay down any such general proposition. In my opinion the law is that if the members of an assembly act with the common object of exceeding the right of private defence, then they are not only all generally guilty of rioting but also of the particular offence constituted by such excess of force.

43. Under our law an assault is a crime except under certain special circumstances. But in one sense criminal force is a continuing wrong and there is a limit where the plea of justification ceases to operate and the liability to punishment revives; if one member in prosecution of the common object of an assembly exceeds that limit every other member shares with him the guilt of his act.

44. In the present case, however, the right of private defence not having been exceeded the question does not arise.

45. The result is that the conviction and sentences must be set aside, and, acquitting the appellants, we direct that they be set at liberty.

Adami, J.

46. I agree.