(1909) 12 CAL CK 0033

Calcutta High Court

Case No: None

Banga Hadua and Others		APPELLANT
	Vs	
Emperor		RESPONDENT

Date of Decision: Dec. 7, 1909

Judgement

1. The appellants in this case have all been convicted of rioting u/s 147 of the Indian Penal Code, and of culpable homicide not amounting to murder u/s 304 read with Section 149. There is no doubt that there was a riot on the 8th March 1909, the day alleged, and that the accused were concerned in it, and there is not much doubt that Amiruddi the deceased man was killed in the course of it, but the first question to which we will direct our attention is whether it has been proved that the appellants took part in an unlawful assembly, since if that is not done the case against them has no foundation. The case put forward by the prosecution was as follows: There was a dispute between two bodies of zemindars as to some homestead land in the village of ITjanibari. The complainant''s party had been in possession of part of it for rather more than a year before the date of the riot, and were then turned out of it by Banga, the first appellant, and his party. They brought a suit u/s 9 of the Specific Relief Act, 1877, and obtained a possessory decree, by force of which they turned Banga out of possession on the 28th February, and themselves took possession. The accused then came in force and turned them out on the occasion when, as we have said, a riot, no doubt, took place. This all happened in relation to the homestead of Amiruddi, the deceased, and it is in respect of the attack on his homestead that the charge in the present case is laid. There was, however, it is alleged, a similar attack on the bari of Mathura Dutt, which is situated next to Amiruddi''s, and the former is said to have been dispossessed and to have reinstated himself in the same way that Amiruddi was and did. Though the attack cm the two baries may be distinguished for legal purposes, it really constituted one transaction, and evidence of what occurred in relation to Mathura''s bari is, of course, evidence in this case. Now the curious feature of this appeal is that the appellants accept all the facts found by the Judge so far as they depend on the credit of the witnesses : And they may well do so,

for the learned Sessions Judge finds that the story told by the witnesses for the prosecution as to Amiruddi and Mathura having been put into possession under the possessory decrees obtained by them is false, and that the appellants'' party were never put out of possession, but were in actual possession on the day of the riot. Having gone carefully through the record, we quite agree with the Judge in the conclusions he has come to on the matters we have mentioned. After coming to those conclusions, however, he goes on to point out that there was certainly a riot, which no doubt there was, and, in his own words, "that one of two things happened, viz., either (1) that both sides deliberately collected men and there was a free fight resulting in the complainant''s side being repulsed and in Amiruddi being killed, or (2) that there was not one riot but two riots, and that the decree-holders first went at dawn with an armed mob and drove out the judgment-debtors and demolished their houses and that subsequently the latter assembling in still lager numbers (their baries being only half a mile off) attacked the other side, re-captured the baries and killed Amiruddi by way of revenge." The second view is the one which commends itself to the Judge. As to it we need only say that it is quite unsupported by evidence, that is by evidence which does not seem to be equally consistent with the first, that no such story was ever put forward by the prosecution, and that it was never suggested to the appellants that this was a case they had to answer. It, no doubt, often happens that the Court may consider that the story told by the prosecution is false in some of its details, but is nevertheless sufficient to prove the guilt of the accused; but such a change in the case as the Judge makes by putting forward his second alternative is not one that can be justified in the present case, and we have no choice but to reject it altogether. This being so, we must consider whether the evidence justifies a conviction taking the first alternative as a correct general description of the facts. In doing this, we must set aside all the evidence of the complainant''s witnesses in so far as it goes to show how the riot began, which is the only question we have to consider, since it is based on the falsehood that Amiruddi was in possession. Some independent witnesses were produced, but these do not speak to the present point. The first witness who does and whom we need notice, is Mohim Kapali, a chowkidar, who was called by the Court. He happened to be passing by the scene of the occurrence early in the morning and was told by Banga, the first appellant, that a lot of people had assembled in a neighbouring biri, that he apprehended an attack and had come to inform him. Mohim saw the people assembled, armed with lathis, shields and sarkies and among them recognised Amiruddi and his son Sesajuddi. He also saw another party to the north, whom he could not recognise, because it was too dark. He then went to the thana to report what had occurred. Bepin Kapali, a defadar, called by the defence, was informed by Mohim of what he had heard and seen, and, going to the place, apparently after the rioting was over, found Amiruddi''s party leaving and Banga weeping in the ruins of the ban. Shyama Charan Kapali, a chowleidar, gave similar evidence. Ram Kumar Baroi saw the actual attack by Amiruddi''s party, and saw the house demolished, as did Kasi Thakur and Sriram Bepari. Thefirst information was lodged by Amiruddi''s

son Mohim is said to have reported at the thana that both sides were assembling men; and Banga accused the other party as soon as the Sub-Inspector saw him, but none of these facts are of much importance in our view of the case, though they seem to us, to be at least consistent with the only occurrence being an attack made on the appellants by a largo force of armed men early in the morning. The appellants were, as the Judge says, trespassers on the land, occupying it in spite of having been formally evicted in due course of law. But we cannot hold that they had no right of private defence. An attack of a most unlawful kind was made, it gave them cause to fear grievous hurt to themselves and destruction of their property, which in fact occurred. Against this they had a right to defend themselves, and we cannot find that this right was exceeded. Amiruddi was in fact killed, though not apparently by a wound which one would expect to be deadly, and the circumstances under which the wound was inflicted are quite obscure. The possession of a spear by the defending party is very different from the possession of such a weapon by the assailants, and does not, in our opinion, point either to such an intention as would constitute an unlawful assembly on the part of the appellants, or to an exceeding, on their part of a right of self-defence. The result is that we are of opinion that it is not proved that the appellants formed part of an unlawful assembly and consequently the whole case against them fails.

2. The appeal is accordingly allowed and their convictions are set aside.

3. The appellants will be acquitted and released.