Emperor Vs Bhagirath Mahato and Others

Govt. App. No. 4 of 1933

Court: Calcutta High Court

Date of Decision: May 11, 1934

Final Decision: Allowed

Judgement

Patterson, J.
This is an appeal by the Superintendent and Remembrancer of Legal Affairs, Bengal, against an order of the Additional

Sessions Judge of Midnapore, dated the 7th July, 1933, by which he acquitted one Bhagirath Mahato and his three sons, Umacharan, Mahesh and

Mahinti in respect of the charges under secs. 147, 342/34 and 323 of the Indian Penal Code, on which they had been tried. The complainant, a

certain Mr. Crawley, being an European British subject, the trial was held under the provisions of sec. 446 of the Criminal Procedure Code, the

jury being chosen in the manner laid down in sec. 275 of that Code. At the conclusion of the trial the jury, by a majority of 3 to 2, found all the

accused not guilty in respect of all the charges, and the learned Additional Sessions Judge, accepting the verdict of the majority of the jury,

recorded an order of acquittal. It may here be observed that two of the Respondents, namely Bhagirath and Mahesh, died during the pendency of

this appeal, so the appeal is now only in respect of the other two Respondents, Umacharan and Mahinti. The appeal purports to have been

preferred both under sec. 449 and under sec. 417 of the Criminal Procedure Code, and a preliminary point has been taken on behalf of the

Respondents to the effect that the appeal is barred by limitation in so far as it purports to be an appeal under the former section,--that is, in so far

as it purports to be an appeal on the facts. The ordinary period of limitation for appeals to the High Court under Criminal Procedure Code is 60

days, vide Art. 155, Sch. I of the Indian Limitation Act, but an exception is made in respect of appeals from orders of acquittal, the period of

limitation for which has been fixed at six months under Art. 157. It is, however, contended that Art. 157 only applies to appeals under sec. 417 of

the Code of Criminal Procedure and not to appeals under sec. 449 of the Code of Criminal Procedure, and that the period of limitation for appeals

under the latter section is the period laid down by Art. 155, namely, 60 days. This contention can only prevail if it be held that the right of appeal in

a case tried by jury under the provisions of Chap. XXXIII of the Criminal Procedure Code is created by sec. 449 of that Code, and it is in my

opinion impossible so to hold. The right of appeal against an order of acquittal is created by sec. 417 of the Code, and sec. 449, in its application

to appeals against acquittals, merely has the effect of enlarging the scope of such appeals in certain classes of cases. The present appeal is an

appeal against an order of acquittal, and the effect of Art. 157, Sch. I, of the Indian Limitation Act is to fix the period of limitation in respect of

such appeals at six months in all classes of cases, whatever may have been the form of trial and whatever may be the scope of the appeal. In this

view of the matter, it must be held that the present appeal, having been filed within six months of the date of the order appealed against, is not

barred by limitation, and that, by reason of the provisions of sec. 449 of the Code of Criminal Procedure, its scope extends to questions of fact as

well as to questions of law.

2. Coming now to the facts of the case, these are, for the most part, not seriously disputed, and are briefly as follows. Bhagirath Mahato was a

tenant under the Midnapore Zemindary Company in respect of a large jote comprising a number of plots of land, including three nij jote plots in

Mouza Baliasole, bearing Settlement Plot Nos. 183, 195 and 434,--On the 25th April, 1932, the entire jote was purchased by the company at a

sale held in execution of a decree for rent. The sale was confirmed in due course and a Sale Certificate granted to the Company, and on the 12th

October, 1932, possession was delivered to the Company of the entire jote, including the three nij jote plots referred to above. Meanwhile the

judgment-debtors, Bhagirath and his sons had, despite the purchase of the jote by the decree-holder Company, grown paddy on the three nij jote

plots, and these crops were still standing on the land at the time of the delivery of possession.

3. On or about the 11th December, 1932, Bhagirath and his sons cut and removed the paddy grown by them on Plot No. 183, and stored it in the

khamar adjoining their homestead, which was situated at a distance of about one mile from the land in question. On being informed of this, Mr.

Crawley, one of the Assistant Managers of the Company, had the paddy on the other two plots, Nos. 195 and 434, reaped by his own men and

removed to the Company"s Cutchery. This was on the 12th and 13th December, and on the latter date, Mr. Crawley, after supervising the work

of cutting and removing the crops from plots Nos. 195 and 434, proceeded to the house of the accused with a view to recovering possession of

the paddy that had been cut and removed by them from plot No. 183 on the 11th. While engaged in this attempt, he and his four cartmen were set

upon by Bhagirath and his sons and others, some 15 or 16 in all:-- the cartmen were assaulted and ran away, abandoning their carts, while Mr.

Crawley himself was thrown to the ground, tied hand and foot, and kept under guard for several hours until rescued by men from the Cutcherry

who had received information of what had occurred. It should also be stated here that at or about the time of the attack on Mr. Crawley and his

cartmen it was noticed that a shed adjoining Bhagirath"s house was on fire, and that Umacharan then and there charged Mr. Crawley with having

set fire to it,--a charge that Mr. Crawley indignantly repudiated.

4. By the time Mr. Crawley was released it was about 8-30 P.M., and he spent that night (the night of the 13th) at the Company"s Cutcherry at

Jaipur, which is about 5 miles distant from the place of occurrence.

5. On the following day he went first to Godapiasal where he informed the Manager of the Company of what had occurred,--then to Midnapore

where he had his injuries examined by the Civil Surgeon, and finally to the Salbani P. S., where he wrote out and made over to the A. S. I. in

charge a brief account of the events of the previous day. This was at about 7-30 p.m., on the 14th, but in the meantime, at about 2 p.m., on that

day, accused Umacharan had appeared at the Thana and had made a statement to the A. S. I., who referred him to Court.--Neither Umacharan

nor any of the other accused, however, filed any petition in Court, and after the usual police investigation, in which Mr. Crawley"s written report to

the A. S. I. at Salbani P. S. was treated as the First Information, Bhagirath and his three sons were sent up with a charge sheet, and were in due

course committed to the Court of Sessions for trial, with the result already stated.

6. The main facts, as summarised above, are well established by the evidence adduced at the tidal, and have not been seriously disputed. The

defence of the accused was, and is, that whatever they did, they did in the exercise of the right of private defence of their property, namely the

paddy that they had grown on plot No. 183 and had cut and removed and stored in their khamar. They also relied, on sec. 59 of the Criminal

Procedure Code in justification of their action in tying Mr. Crawley up,--their contention being that they did so with a view to his being taken to the

Thana. As regards the fire that broke out in their homestead at the time of the occurrence, their case was that this was the work of Mr. Crawley,

and they relied on this incident in further justification of their action, alleging that it was necessary that Mr. Crawley should be placed under restraint

and so prevented from doing any further damage. These contentions were sought to be supported at the trial by suggestions to the effect that Mr.

Crawley had appeared at the house of the accused without any warning,--armed with a revolver and accompanied by a large number of coolies

and cartmen,--and had proceeded to loot the paddy and to set fire to the accused''s house. There is, however, not a vestige of evidence in support

of these allegations, and the appeal has been argued before us on behalf of the accused, on the footing that Mr. Crawley was unarmed and was

accompanied only by his four cartmen, and that he relied solely on his personal prestige and authority to compel the accused to surrender the

paddy, and not on any force or show of force.

7. On the side of the prosecution, considerable importance appears to have been attached to that portion of Mr. Crawley''s evidence in which he

stated that he had met Bhagirath and Umacharan on the 12th when he was supervising the cutting of the paddy on the other two plots, and that, on

his promising to consider the question of letting them have a half-share of the paddy of all three plots and of resettling the land with them, they had

agreed to return the paddy they had cut and removed from plot No. 183. According to Mr. Crawley this arrangement was confirmed by

Umacharan on the following day when he (Mr. Crawley) went to accused''s, house to get the paddy, and Umacharan himself pointed out the stack

of paddy in question among the other stacks in the accused''s khamar.--It was not till the carts had been loaded up and the bullocks were about to

be yoked that the accused suddenly turned round and refused to allow the paddy to be removed, and attached Mr. Crawley and, his cartmen in

the manner already described. Mr. Crawley''s evidence regarding the alleged consent of the accused, to the removal of the paddy, has been

characterized by the defence as false, and as having been concocted with a view to meeting the plea of private defence raised by the accused, and

attention has been drawn to the fact that there is no mention in the First Information of the discussion that is said to have taken place between Mr.

Crawley and the accused on the 12th. This omission does not seem to me to be of any great importance, for Mr. Crawley''s attitude being that the

paddy belonged to the Company and that he had the right to take it, it was not to be expected that he would think it necessary to mention, in the

report he filed at the Thana, the fact that Bhagirath and Umacharan had on the day before the occurrence given their consent to its removal. It has

also been contended on behalf of the accused that if the latter had really given their consent to the removal of the paddy, there was no reason why

they should suddenly change their attitude and refuse to allow it to be re-moved.--I am not prepared to accept this contention, for the apparent

inconsistency in the conduct of the accused is far out-weighed by the extreme improbability of Mr. Crawley sending only four carters to take

possession of the disputed paddy, and going alone and unarmed to supervise its removal, if the accused had not previously given their consent.

Attention has also been drawn to the fact that one of the prosecution witnesses, Jogendra Mahato, has contradicted himself as to whether

Umacharan first protested against the removal of the paddy when the carts were being loaded up inside the khamar, or after the loaded carts had

been taken out of the khamar and the bullocks were about to be yoked, as stated by the other witnesses to the occurrence. This point does not

seem to me to be of any real importance, and the discrepancy in the evidence to which attention has been drawn is probably more apparent than

real. On the other hand all the witnesses to the occurrence are agreed that Umacharan himself pointed out the stack of paddy that was to be

removed to Mr. Crawley, and although there is no clear mention of this fact in the First Information, it is stated therein that Umacharan gave his

consent to the carts being loaded up, which comes to very much the something. The majority of the jury appear to have disbelieved Mr. Crawley''s

evidence regarding the alleged consent, and the learned Additional Sessions Judge, who evidently regarded this as the crucial point in the case, was

not prepared to disagree with them, and accordingly accepted their verdict. I am however clearly of opinion, for the reasons given above, that Mr.

Crawley''s evidence ought to be accepted in its entirety, and that the accused had, as stated by him, actually given their previous consent to the

removal of the paddy.

8. The question of previous consent has, however, in my opinion, been given quite unnecessary prominence, in view of the fact that the paddy

belonged to the Company and had been wrongfully cut and removed by the accused. Moreover even the accused''s bastu and the adjoining

khamar in which the paddy was stored, had been purchased by the Company in execution of their decree, along with the rest of the accused''s

jote, as appears from the evidence of the Company''s Tahsildar, prosecution witness No. 13. In these circumstances it is impossible to hold that

the accused had any right of private defence in respect of the paddy in question, whether they had or had not given their previous consent to its

removal. The paddy did not belong to them but to the Company, and they had no right to prevent its removal by the Company''s agent, Mr.

Crawley. Moreover the right of private defence of property only comes into operation when certain specified offences against property are

committed, or attempted to be committed and once it is held that the paddy in question belonged not to the accused, but to the Company, it

becomes clear that neither Mr. Crawley nor the carters had any dishonest intention, that they neither committed nor attempted to commit any of the

offences against which the law gives a right of private defence, and that the accused are, therefore, not entitled to plead that in driving away the

carters and in assaulting and tying up Mr. Crawley, they acted in the exercise of the right of private defence. In this view of the matter, the

contention that has been urged before us on behalf of the Respondents to the effect that the criminal law concerns itself mainly with actual physical

possession, whether lawful or unlawful,--and that the accused were, rightly or wrongly, in actual physical possession of the paddy in question and

were, therefore, entitled to defend their possession, becomes irrelevant and need not be further referred to.

9. The proposition that the right to the growing crop passes by the sale of the land, in the absence of an express provision to the contrary, and the

connected proposition that, in the case of a Court sale, the right to the possession of the crop accrues from the date of delivery of possession of

the land, hardly requires to be supported by authority, but if authority be needed, it is sufficient to refer to Ramalinga v. Sami Appa I. L. R. 13

Mad. 15 (1889) and Abinash Chandra Sarkar v. King-Emperor 28 C. L. J. 120 (1918).

10. The learned Additional Sessions Judge has entirely misconceived the legal position with regard to this point, for in his charge to the jury I find

the following passage:--

The defence further argued that the paddy was grown by the accused and that the accused had a right at least to a share of it. This is admitted by

the prosecution. The accused certainly had a right at least to a share of the paddy, but if they themselves consented to return it, it was no offence

for Mr. Crawley to order his cartmen to take delivery of it. If however you find Mr. Crawley went without being asked to do so and took

possession of the paddy, you will have to hold that the accused were acting in the exercise of the right of self-defence.

11. For the reasons already given, this direction must be held to be entirely erroneous, and it may well be that it was by reason of this erroneous

direction on the part of the Judge that the majority of the jury were led to return a verdict of not guilty. The learned Additional Sessions Judge has

clearly misdirected both himself and the jury on the above point, and having regard to the prominence that was given to this point at the trial, I

cannot but hold that, by reason of the said misdirection both the verdict of the majority of the jury and the order of the Judge accepting the majority

verdict, lose much of the weight that would otherwise attach to them.

12. Another serious defect in the charge to the jury is that the learned Additional Sessions Judge omitted altogether to consider whether the right of

private defence of property, if it had ever existed at all, was still in existence at the time when Mr. Crawley was attacked and tied up. It appears

that the cartmen had already abandoned, their carts and run away, and that there was, therefore no further possibility of the paddy being taken

away by force. This being so, it must be held that the right of private defence of property, assuming such a right to have existed at the earlier stages

of the occurrence, was no longer in existence at the time of the attack on Mr. Crawley,--and the jury would probably, or at any rate possibly, have

so held, if they had been properly directed on the point.

13. Apart from all this, it is clear that in lying up Mr. Crawley and in keeping him tied up for several hours, the accused used far more force than

the circumstances of the case required, whatever view be taken of those circumstances. Sec. 59 of the Code of Criminal Procedure is of no avail

to the Respondents in this connection, for that section only authorises a private person to make an arrest in certain circumstances which have no

application to the present case. The attempt to remove the paddy was not an offence at all, and there is no evidence whatever in support of this

contention that the outbreak of fire in the house of the accused was caused by Mr. Crawley. Indeed the circumstances are rather such as to

preclude such a possibility, and to raise a strong suspicion that the fire was started by some one on the side of the accused. Moreover the evidence

lends no support whatever to the theory that Mr. Crawley was seized and tied up with a view to his being handed over to the police, and the two

Chaukidars who were examined as witnesses in the case have emphatically denied that they were ever asked to take Mr. Crawley to the Thana. It

further appears that no mention whatever of the incidents that had taken place at the accuseds'' house on the 13th, was made by Umacharan when

he went to the Thana the following afternoon.--The General Diary entry shows that the only complaint he made was with regard to the reaping of

the paddy by the Company''s men. It has been suggested that what he really stated at the Thana was that Mr. Crawley had looted his paddy and

set fire to his house and had been arrested and kept in the custody of the Chaukidars, and that all this was suppressed by the A. S. I. in collusion

with the Company''s officers. There is no evidence whatever in support of this suggestion, and I have no hesitation in rejecting it as false.

14. I am clearly of opinion that there has been a serious miscarriage of justice in this case and that the order of acquittal cannot be allowed to

stand. The plea that whatever the accused did they did in the exercise of the right of private defence, has completely failed, and on the proved and

admitted facts it must be held that the accused are guilty of the offences with which they have been charged.

15. I would accordingly allow the appeal and set aside the order of acquittal its respect of the two surviving Respondents, Umacharan and Mahinti.

Umacharan was the prime mover in the affair and in his case a fairly severe sentence is called for:--I would convict him under secs. 147, 342/34

and 323 of the Indian Penal Code, and sentence him to nine months'' rigorous imprisonment under each of the two former sections, the sentences

to run concurrently,--no separate sentence being passed under sec. 323 of the Indian Penal Code. Mahinti appears to have played a

comparatively unimportant part, and no specific acts have been attributed to him individually:--I would convict him under secs. 147 and 342/34 of

the Indian Penal Code and sentence him to three months'' rigorous imprisonment under each section,--the sentences to run concurrently.

16. Respondents Umacharan and Mahinti must now surrender to their bail and serve out their sentences.

Guha, J.

I agree.