

MAGUNI CHARAN PRADHAN

v.

STATE OF ORISSA

APRIL 4, 1991

[A.M. AHMADI, V. RAMASWAMI AND K. RAMASWAMY, JJ.]

*Penal Code, 1860—Sections 97, 103, 105—Right of private defence of property—Trespass of land—Exercise of right by owner against trespasser—Scope of.*

*Penal Code, 1860—Section 302—Murder—Conviction under—Plea of right of private defence of property—Causing death by giving blows on head of the unarmed trespasser in sitting position—Amounts to abuse of right of private defence and commission of murder.*

The appellant was in possession of the field under a sale deed executed by his mother in his favour till the day prior to the incident. When he went to the field, he saw the deceased and his companions ploughing the field. He asked them to unyoke the bullocks. On refusal he assaulted the unarmed deceased with a stick on the head while he was sitting on the ridge, which resulted in his death.

The Trial Court acquitted the appellant giving him the benefit of the right of private defence to person and property. The High Court in appeal, reversed the finding of the Trial Court holding that he had no such right and convicted the appellant under Section 302 and sentenced him to rigorous imprisonment for life.

Dismissing the appellants' appeal, this Court,

HELD: 1. A rightful owner in peaceful possession of his land is entitled to defend his property against any person or persons who threaten to disposses him. The law does not expect any cowardice on his part when there is real and imminent danger to his property from outside sources. Thus a rightful owner is entitled to throw out, by using such force as would in the circumstances of the case appear to be reasonably necessary, any person who tries to invade his right to peaceful possession of his property. But if the trespasser has settled in the possession of the property, the course which the rightful person must adopt is to recover possession in accordance with law and not by force. In such a case the trespasser would be entitled to defend his possession even against a rightful owner if the latter tries to evict him by use of force. [196B-C]

A 2. The appellant had a right to confront the prosecution party which was guilty of criminal trespass and could have used reasonable force to clear the encroachment, but he could not use it as a pretext or excuse to settle the old dispute regarding the title to the land. He clearly abused the right and in the guise of protecting his property he attacked an unarmed person who was sitting at distance by inflicting heavy blows on the vital part of his body, namely, the skull, causing multiple fractures. The deceased had not offered any resistance, he was unarmed and was in sitting posture when the blows were hit giving him no chance even to run away. The appellant abused the right arising out of the trespass to kill the deceased. This was a case of intentional murder and not something done in the exercise of right to protect the property. [197B-D]

D 3. In the instant case, the appellant inflicted more than one blow on the deceased on seeing him on his land. There was no grave or sudden provocation as urged by counsel for the appellant. The medical evidence clearly shows that the blows were vicious and on the head resulting in the fractures of the parietal bone. In such circumstances, the case cannot fall either under Section 304 Part I or part II, IPC. The appellant will surrender to his bail and serve out the remaining part of his sentence. [197E-G]

E CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 814 of 1979.

From the Judgment and Order dated 28.6.79 of the Orissa High Court in Government Appeal No. 26 of 1976

F Amlan Ghosh for the Appellant.

R.K. Mehta for the Respondent.

The Judgment of the Court was delivered by

G AHMADI, J. The appellant was tried for the murder of Bhikari Pradhan. The Trial Court acquitted him giving him the benefit of the right of private defence to person and property. The High Court in appeal reversed the Trial Court holding that he had no such right. The High Court, therefore, convicted him under Section 302 and directed him to suffer rigorous imprisonment for life. It is against the said order of conviction and sentence that the present appeal is preferred.

H

The Trial Court on an appreciation of PWs 1, 5 to 7 concluded as under:

“Thus the truth seems to be that when Bhikari Pradhan and PWs 1 and 5 to 7 criminally trespassed into the disputed land and Bhikari Pradhan took the dominant role in taking his two pairs of bullocks and 2 hired labourers, PWs 5 and 7 and ploughing the disputed land, the accused party went there to plough the same and when the accused objected Bhikari Pradhan raised an axe at the accused who whirled the stick which struck on the head of Bhikari Pradhan who injured and fell down on the ground and was subsequently taken to Harichandanpur hospital where he was found dead.”

Proceeding further, the Trial Court after discussing the case law on the point, held:

“In the present case, the deceased party committed criminal trespass on the disputed land. When the accused objected the forcible ploughing of the disputed land by the deceased party, Bhikari Pradhan chased the accused by holding an axe. In such circumstances I think the accused had reasonable apprehension of death or grievous hurt to him, and the accused whirled the stick which struck on the head of Bhikari Pradhan. In such circumstances it is not only clear that the accused had no intention to cause the death of Bhikari Pradhan, but his acts are protected by exercise of right of private defence of property and person and did not exceed the right of private defence of property or person. Thus the accused is protected by Sections 100 and 104, IPC.”

The High Court on a reappraisal of the prosecution and the defence evidence held:

“Considering the evidence of this witness along with the sale deed Ext.B. we concur in the finding of the Trial Judge that the respondent was in possession of the land by virtue of his purchase.”

and then proceeded to add in para 9 as under:

A "The respondent was in possession of the land till the date of occurrence. The prosecution party entered into the land and forcibly ploughed the same. The respondent asked the prosecution party to unyoke their bullocks, but they did not agree. Such conduct would amount to criminal trespass .....

B On the question of right of private defence, the High Court approached the question thus:

C "But even if such an intention is imputed to them the right of private defence of property against criminal trespass which would arise in favour of the respondent will be taken away on account of the provisions of Section 99, IPC. It says that there is no right of private defence in cases in which there is time to have recourse to the protection of the public authorities. Since there was no crop on the land the respondent stood nothing to lose if he would have taken legal steps to restrain the prosecution party from interfering with his possession. Moreover, when no actual damage was being done to the property, he really had nothing to protect. We are, therefore, of the opinion that there was no right of private defence of property and the respondent cannot be said to have acted in the exercise of that right when he assaulted the deceased."

E The High Court disagreed with the Trial Court that the deceased had threatened to hit the appellant with an axe and, therefore, the appellant had hit him with his stick.

F Thus both the courts below have recorded a concurrent finding of fact that the title to the field vested in the appellant and the deceased and his companions had committed trespass by entering into and illegally ploughing the same. The appellant went to the field and on seeing the deceased and his companions ploughing the field asked them to unyoke the bullocks and on the deceased refusing assaulted him with a stick causing two external injuries, namely, (i) ecchymosis over the right side of face covering an area of 3" × 2" and (ii) lacerated wound 4" × 0.5" over the right parietal bone in vertical direction. On internal examination a fracture of the right parietal bone, a fracture starting from the middle of the parietal bone and extending upto the right ear and concussion of the brain substance were noticed. He opined that both the injuries were possible by two

separate strokes. He further opined that external injury No. 2 could be caused by 1 to 3 heavy strokes on the same part. On the basis of this evidence the High Court came to the conclusion that the appellant was guilty of murder.

There is no doubt that the deceased died a homicidal death. The concurrent findings of fact reveal that the appellant was in possession of the field under a sale deed executed by his mother in his favour till the day prior to the incident. Even so, the High Court held that he had no right to assault and kill the deceased. That is because the law does not permit a person, even if there is trespass upon his land to take the law in his own hands to secure back the possession. In the instant case, when the appellant went to his field he found the deceased and his companions in possession of the field and tilling the land. Although the title of the field vested in him and he was in actual possession, his remedy was not to assault the deceased but to seek protection of the public authorities to evict him. The High Court, therefore, came to the conclusion that the appellant had no right of self defence.

The law relating to the right of private defence is encapsulated in Sections 96 to 106, IPC. According to Section 96 nothing is an offence which is done in the exercise of the right of private defence. Section 97 provides that every person has a right, subject to the restrictions contained in Section 99, to defend (i) his own body, and the body of any other person against any offence affecting the human body and (ii) the property, whether movable or immovable, of himself or of any other person, against any act which is an offence falling within the definition of theft, robbery, mischief or criminal trespass. Section 99 is in two parts: the first enumerates acts against which there is no right of private defence and the second indicates the extent to which such right may be exercised. The third clause falling within the first part says there is no right of private defence in cases in which there is time to have recourse to the protection of the public authorities. The second part says that the right of private defence in no case extends to the inflicting of more harm than it is necessary to inflict for the purpose of defence. Sections 100 to 102 deal with the right of private defence of the body with which we are not concerned. Section 103 provides that the right of private defence of property extends to the voluntary causing of death or any other harm to the wrong-doer, if the offence which occasions the exercise of the right, be an offence of robbery, house-breaking at night, mischief by fire, theft, mischief or house trespass. Section 104 indicates when such right extends to causing any harm other than death. Then comes section 105 which states that the right of

A private defence to property commences when a reasonable apprehension of danger to the property commences and continues, in the case of criminal trespass, as long as the offender continues in the commission thereof. These provisions clearly show that a rightful owner in peaceful possession of his land is entitled to defend his property against any person or persons who threaten to dispossess him. The law does not expect any cowardice on his part when there is real and imminent danger to his property from outside sources. Thus a rightful owner is entitled to throw out, by using such force as would in the circumstances of the case appear to be reasonably necessary, any person who tries to invade his right to peaceful possession of his property. But if the trespasser has settled in the possession of the property, the recourse which the rightful person must adopt is to recover possession in accordance with law and not by force. In such a case the trespasser would be entitled to defend his possession even against a rightful owner if the latter tries to evict him by use of force. But no hard and fast rule can be laid down in this behalf because much would depend on the facts of each case.

D The facts of this case reveal that the disputed land belonged to Saibani, the appellant's mother who had sold it to the appellant under a deed of conveyance. PW 1 happens to be her co-wife's daughter son while the deceased was PW 1's maternal uncle. There was some dispute between the appellant and PW 1 regarding this parcel of land. On the execution of the sale deed dated 9th June, 1972 in favour of the appellant the title to the land passed to the appellant and as found by both courts he was in actual possession of the land till the day previous to the incident. The incident occurred on 1st June, 1974 on which day PW 1 entered into the field and started to till it with the help of PWs 5 to 7. This act of criminal trespass was at the behest of the deceased. On that afternoon the deceased had gone to the field with food for PWs 1, 5 to 7. After giving them the meals the deceased sat on the ridge of Mohan Mahanta at a distance of about 30 cubits. At that time the appellant arrived at the scene with his servants DW 1—Madhu and Budhu (not examined) with plough and bullocks to till the land. On seeing PW 1 and his companions tilling the land, he asked him to unyoke the bullocks but the prosecution party refused whereupon the appellant went to where the deceased was sitting on the ridge and dealt him heavy blows with his stick which proved fatal. Since the defence version that the deceased had gone after the appellant with an axe is disbelieved, and in our view rightly, it follows that the appellant went and attacked the deceased who was unarmed and was still in sitting posture and gave two or three blows with his stick on the head of the

deceased. Can the benefit of the right of private defence be available to the assailant in such circumstances? Can it be said that the appellant was justified in using force? True it is, PW 1 and his companions had invaded the field of the appellant which was lying vacant and had started to till it. Even so, was the appellant justified in straightaway approaching the deceased, who was sitting on the ridge, and assaulting him on the prosecution party refusing to unyoke the bullocks? The appellant had a right to confront the prosecution party which was guilty of criminal trespass and could have used reasonable force to clear the encroachment, but he could not use it as a pretext or excuse to settle the old dispute regarding the title to the land. He clearly abused the right and in the guise of protecting his property he attacked an unarmed person who was sitting at a distance by inflicting heavy blows on the vital part of his body, namely, the skull causing multiple fractures. The deceased had not offered any resistance, he was unarmed and was in sitting posture when the blows were hit giving him no chance even to run away. It, therefore, seems crystal clear that the appellant abused the right arising out of the trespass to kill the deceased. In these special circumstances we feel this was a case of intentional murder and not something done in the exercise of right to protect the property. The High Court rightly points out that the land was lying fallow and there was no such urgency to take the law in his own hand. We concur with the High Court that this is a case of murder simpliciter.

Counsel for the appellant submitted that the conviction should be altered to one under Section 304 Part II, IPC. This is a case in which the appellant inflicted more than one blow on the deceased on seeing him on his land. There was no grave or sudden provocation as urged by counsel for the appellant. The medical evidencè clearly shows that the blows were vicious and on the head resulting in the fractures of the parietal bone. In the circumstances, we do not think that this is a case falling either under Section 304 Part I or Part II, IPC.

We, therefore, do not see any merit in this appeal and dismiss the same. The appellant will surrender to his bail and serve out the remaining part of his sentence.

V.P.R.

Appeal dismissed.