

PETITIONER:
VISHAL SINGH & ANR.

Vs.

RESPONDENT:
STATE OF MADHYA PRADESH.

DATE OF JUDGMENT: 24/10/1997

BENCH:
M.M. PUNCHHI, M. SRINIVASAN

ACT:

HEADNOTE:

JUDGMENT:

THE 24TH DAY OF OCTOBER, 1997

Present:

Hon'ble Mr. Justice M.M.Punchhi
Hon'ble Mr. Justice M. Srinivasan

Rajender Singh, Sr. Adv., Chander Bhan, Any Mohla and Ranjit Kumar, Adv. with him for the appellant in CrI.A.No. 777/94
Dinesh Kr.Garg, Adv. (NP), for the appellant in CrI.A.No.778/94

Gulab Gupta, Sr.Adv., (Sakesh Kumar) Adv. for Uma Nath Singh, Adv. with him for the Respondent

J U D G M E N T

The following Judgment of the Court was delivered:
Hon'ble Srinivasan, J.

The appellants in these two appeals were accused 1, 2 and 3 before the Court of Sessions Judge, Tikamgarh,, Madhya Pradesh in Sessions Case No. 39/01. There were 22 accused apart from 4 persons who had absconded. Some were convicted by the Sessions Judge vide his judgment dated 1.10.1993. On appeals, the High Court confirmed the conviction and sentence of these three appellants with some modification and acquitted the rest.

On 25.6.1990 the accused the 4 absconding persons were said to be cultivating a land known as 'Kothotiya Har'. Tough pattas had been issued in favour of some of the accused and the land was registered in their name, there were disputes relating to the same which were pending before the Revenue Authorities. The rival claimants claimed to be in possession of the land and were protesting against the claim of the accused and resisting of the attempts of the accused to plough the land. On the aforesaid date the occurrence took place between the two groups resulting in the death of 4 persons of the complainants group. The appellants and the other accused were charged with offences under Section 147, 148, 302/149 and 307/149 I.P.C. Two of them were also charged for having hatched a criminal conspiracy for committing the offences. The Sessions Judge acquitted 9 accused including those charged with criminal conspiracy and convicted the remaining 13 and sentenced them to various terms of imprisonment including sentence of death awarded against the appellants in Criminal Appeal No. 777 of

1994. The High Court acquitted 10 more persons and confirmed the conviction and sentence of three of them. So far as the appellants in Criminal Appeal No. 777 of 1994 are concerned the High Court converted the sentence of death to life imprisonment and also set aside the conviction under Section 147 I.P.C.

In these appeals learned counsel for the appellants has reiterated the contentions put forward before the courts below. According to learned counsel the appellants were only exercising the right of self defence and the facts of the case as established would show that it was the other party who fired in the first instance and the appellants had necessarily to defend themselves by using weapons. It is contended that both courts having found against the case of the prosecution that there was a conspiracy for the commission of offence on the previous night, and the case that there was an attempt to compromise the land dispute between the parties ought to have upheld the defence of the appellants. According to learned counsel the following facts are relevant and should be given due weight.

1. The land had been registered in the revenue records in the names of the appellants and there is a presumption of possession being with them. Consequently the courts ought to have proceeded on the footing that the other party was the aggression and made attempt to trespass on the land.
2. There is ample evidence to show that the members of the other party had lethal weapons including fire arms when they attempted to trespass on the land.
3. There were empty cartridges near the bodies of the deceased which prove that the deceased had first used fire arms. Learned counsel concluded that if at all, the appellants could only be said to have exceeded the right of self-defence.

We are unable to accept any of the aforesaid contentions. No doubt the entry in the revenue record was made in favour of the appellants and their men but such an entry could only give rise to a rebuttable presumption. Admittedly, the proceedings were pending and the parties were challenging the correctness of entries in the revenue records. On the basis of the evidence on record, the High Court has come to the conclusion that the appellants and their men could not be said to have been in possession. The High Court has observed that the statutory presumption under Section 117 of the Madhya Pradesh Land Revenue Code, 1939 was rebutted by the evidence of Pw 23 and others who claimed that the disputed land was in their possession. We do not find any error in the appreciation of the evidence made by the High Court. Learned counsel for the respondent, State of Madhya Pradesh has drawn our attention to the relevant records and submitted that the entries in the records do not substantiate the case of the appellants as the name of other persons were also mentioned therein as in possession. It is unnecessary for us to consider that aspect of the matter in these proceedings. It is sufficient to point out that the conclusion of the High Court on the question of possession does not suffer from any error.

Even assuming for the sake of argument that actual possession was with the appellants that would not enable the appellants to contend that they could use fire arms or such other weapons which could cause death to other persons even if such other persons were about to trespass on the land. The High Court has found that there was no evidence on

record to provide that the deceased and the members of their party were armed with guns and such other weapons. It is also found that there is no evidence on record to prove that the deceased had fired in the first instance. As regards the contention that the empty cartridges were found near the dead bodies, the High Court has discussed the matter at length and come to the conclusion that there were no empty cartridges but there were only plastic tiklis. The most important aspect of the matter that has been taken note of by the High Court is that none of the members of the accused party sustained any injury whatsoever. The entire evidence has been considered by the High Court and we do not find any justification to differ from its view.

Learned counsel for the appellants laid considerable stress on the statement of Pw 6. In the deposition of Pw 6 it has been recorded that "Muratsingh, Chandrabhan Vagairah ne 2-2, 3-3 fire kiye." Learned counsel has contended that the said statement proves clearly that it was the party of the deceased who used the fire arms in the first instance and the appellants had the necessity of determine themselves by using their weapons. The High Court has discussed this aspect of the matter and found that there is some mistake in the recording of the evidence which was obvious in the context. Learned counsel vehemently argued that once the evidence was read out to the witness and signed by the Sessions judge it was not open to the court to read it differently. On a perusal of the entire deposition of the witness, it is clear that there was some mistake in the recording of the particular sentence. As pointed out by the High Court, it was not the suggestion of the appellants to any of the witness that the deceased had fire-arms the them. We do not find any justification to differ from the view of the High Court as it has been arrived at after taking into consideration the entire evidence on record.

In the result we are unable to agree with the learned counsel for the appellants that they were exercising their of self-defence. we have no hesitation to confirm the judgment of the High Court and the sentence awarded by the High Court. Both the appeals fail and are dismissed.