

*Judgement of the Lords of the Judicial Committee  
of the Privy Council on the Appeal of Har Lal  
v. Mussammat Sardar from the High Court of  
Judicature for the North-Western Provinces,  
Allahabad ; delivered April 3rd, 1889.*

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Present :

LORD HOBHOUSE.

LORD MACNAGHTEN.

SIR RICHARD COUCH.

[*Delivered by Lord Hobhouse.*]

THE only question in this case is as to the validity of certain transactions which took place in the months of May and June 1881, affecting the title to a moiety of a village called Nakra. The parties to the transaction were, first, the Plaintiff, who is the widow of one Ganesh Parshad, and, secondly, the Defendant Sardar Dullia, under whom the other Defendant Har Lal claims by virtue of a deed of gift.

The nature of the transactions is this: The village Nakra stood in the name of Ganesh Parshad, husband of the Plaintiff, who had been the servant and agent of Dullia's husband, and afterwards of herself, and who had when in their service acquired the ownership of the village. He was recorded in the collector's books as the owner. In May and June 1881 the Plaintiff came before the patwari, acknowledged Dullia's title to one moiety of the village, claiming the other moiety for herself, and a mutation of names was effected from that of Ganesh Parshad into those of the Plaintiff herself and of Dullia, one moiety each. The mutation of names was followed by possession on the part of Dullia by receipt of rents and profits, and she was found to be in

▲ 58176. 125.—5/89. Wt. . E. & S. ▲

possession in a proceeding before the Revenue Court in November 1883, when she executed the gift to Har Lal, and he applied for possession. The Plaintiff now says that in effecting this mutation of names she was acting under intimidation and fear, that Dullia had incited a caste or sect in the village called Lodhis, hostile to Ganesh Parshad, who threatened the Plaintiff with death unless she would transfer half the estate to Dullia. If the Plaintiff fails to prove that case, her suit must fail altogether.

Now Ganesh Parshad was murdered on the 13th of April 1881, and his murder was imputed to this caste of Lodhis, five of whom were committed for trial. But it turned out that though the real culprit was a Lodhi, he was a person who had a private grievance against Ganesh Parshad, who, he said, had deprived him of his estate. He killed him out of private revenge. He was convicted and sentenced to death, and the other four who were tried with him were acquitted. The suggestion made in the suit now is still that the real murderers were the caste of Lodhis, and that they effected the murder because they were at enmity with Ganesh Parshad and favoured Dullia, and that the same motives operated to make them threaten the Plaintiff unless she would transfer a moiety of the estate to Dullia.

To prove that case several witnesses were called. The Subordinate Judge disbelieved the witnesses. He considered that their character was such as to make them not very trustworthy, that there were discrepancies in their evidence, and, above all, that the improbability of their story was so great that it should be rejected. On those grounds he dismissed the suit.

The Plaintiff appealed to the High Court, and the High Court say as to the evidence:—  
“We have heard all the evidence in the case,

“ and we entertain no doubt, not only that under  
 “ the circumstances which have been proved the  
 “ Plaintiff’s allegations were extremely probable,  
 “ but that the direct evidence produced by her  
 “ was sufficient to establish her allegations.”  
 That is the whole of their comment on the evidence. They do not mention any point on which they think the Subordinate Judge has gone wrong in disbelieving the witnesses, but they differed with him in the result, and they reversed his decree, and gave the Plaintiff a decree for the moiety of the estate that she claimed.

Such being the difference between the Courts below, the duty is thrown upon their Lordships of looking into the whole of the evidence, and of examining which of them is right.

The substantial story told by the witnesses is this: that one day after the murder of Ganesh Parshad—nobody says exactly how long, but one of them says a month after—the Plaintiff and Dullia were sitting at the doors of their respective houses, which closely adjoined one another, that on that occasion Dullia spoke to a number of Lodhis who were present, and incited them to threaten the Plaintiff with death or injury if she did not give Dullia half the estate, that the Plaintiff at first refused, that she refused several times, but the mob of Lodhis went on repeating the threats, until at last the Plaintiff yielded and promised to give the moiety of the estate. Therefore what the Court is asked to believe is that, while five of these Lodhis were accused of a capital crime and were on their trial, another group of Lodhis assembled to commit another heinous offence by intimidating the widow of their former victim into parting with some of her property, from the very same motive that instigated the murder of Ganesh Parshad, and that the person who was to profit by that crime sat by and openly incited it. That

is a story which would require proof by clear consistent testimony from persons who are above suspicion. Six witnesses are called to prove it. Three of them are tenants of the Plaintiff, one of them is a servant of the Plaintiff, and one of them is the Plaintiff's brother, and the sixth is apparently an independent man.

What has been the conduct of the parties? The Plaintiff herself does not go to any magistrate, and does not seek any assistance. Shortly afterwards—we cannot tell exactly how long, but probably a fortnight or three weeks afterwards—she appears openly before the patwari, is examined by him in the presence of her own general mooktear, one Debi Parshad, and gives evidence that Dullia is the proper owner of one moiety of the estate, and that the two have agreed to share that which stood in the name of Ganesh Parshad. The witnesses—these tenants, servants, brother, and neighbour—all appear to have been perfectly supine. Having seen this heinous crime committed, knowing that their mistress or their friend was under threats against her life, they do not appear to have gone to anybody to seek any assistance at all.

Their Lordships cannot agree with the High Court that that is a probable story. On the contrary, it seems to them to be a story of the highest improbability and one not to be believed without the clearest and most cogent evidence.

Then as to the amount of contradiction. The only independent witness is also the only one who speaks in any detail to the transactions, and he contradicts himself in a very material point. In the course of his examination he is asked whether he knew Dullia, whom he says he saw inciting the mob to threaten the Plaintiff. He answered thus: "I did not hear"—by which he means I never heard—"the voice of Mussammatt

“ Sardar Dullia except on that day. I have seen  
 “ Sardar Dullia on several occasions and recognise  
 “ her also. On the day she asked the Lodhis to  
 “ threaten the Plaintiff her face was visible by the  
 “ side of the door. I recognised her.” But then  
 in a subsequent part of his examination he says :  
 “ When the said Mussammat ”—that is Dullia—  
 “ was seated in her dehliz and asked to have the  
 “ Plaintiff threatened I took her for the said  
 “ Mussammat because the people said it was her.  
 “ I did not see her face, nor could I recognise her.”  
 So that on the important point of the identity of  
 Dullia this witness tells first one story and then  
 the exact contradictory of it. Moreover the  
 witnesses mention several persons as having been  
 present on the occasion. Three of those persons  
 are called. Two of them deny that there was  
 any enmity between the Lodhis and Ganesh  
 Parshad, and all three deny that there was any  
 intimidation whatever. There seems to have been  
 a conference of some kind, and according to these  
 three witnesses Dullia required the Plaintiff,  
 whether on legal or moral grounds does not  
 appear to, give her some advantage out of the  
 estate, and the agreement ultimately was that she  
 should have half.

So much for the evidence that was given.  
 But then there was evidence which might have  
 been given, and was not given, of a very important  
 kind. The Plaintiff herself, who would be a  
 very important witness, is not one of those  
 Indian ladies who could not be expected to come  
 forward in a court of justice. She is in the  
 habit of appearing in public with her face un-  
 covered, and she did appear before the patwari  
 and was examined in the mutation case. There-  
 fore there is no reason why she should not have  
 appeared in this case, and yet she is not called.  
 Moreover the witnesses said that her general  
 mooktear, Debi Parshad, was present on the

occasion of the threats. He appeared also on the question about possession after the conveyance to Har Lal, and he deposed to the appearance of the Plaintiff before the patwari and to the story that was told there, and he said nothing then about any threat used to the Plaintiff. He did say that after the mutation into Dullia's name he received the rents and that he paid over a moiety to Dullia because he was afraid of the villagers; but it appeared that he very soon abstained from paying the moiety, and, when asked whether he was not still afraid of the villagers he said he was, but he had not an opportunity to pay the rents. So that he gave somewhat ambiguous evidence on that occasion. But it is obvious that he would be the most important witness to prove the Plaintiff's story if it were true, and yet he is not called, although he is still living.

Having regard then to the strange nature of the Plaintiff's story, to the position of her witnesses, to her conduct and theirs at the time of the alleged threats, to the contradictions internal and external of the evidence adduced, and to the omission of evidence that ought to have been adduced, their Lordships think that her story is entirely incredible, that the Subordinate Judge was quite right in rejecting it, that the High Court ought to have dismissed the appeal to them with costs, that a decree to that effect should now be made, and that the Respondent should pay the costs of this Appeal. Their Lordships will humbly advise Her Majesty to that effect.