

Hirdey Ram Vs. Emperor

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Court : Allahabad

Decided On : Jun-28-1945

Reported in : AIR1946All4

Appellant : Hirdey Ram

Respondent : Emperor

Judgement :

Sinha, J.

1. In the District of Farrukhabad there is a family of which the founder was a man Thamman Singh. Thamman Singh had three sons, Ulfat Rai, Hukum Singh and Shyam Lal. Hukum Singh has two sons, Harish Chandra and Sita Ram. Shyam Lal's son is Hirdey Ram. Of these Harish Chandra and Hirdey Ram were convicted under Section 20 of the Arms Act, and sentenced to a term of rigorous imprisonment for five years. Both have come before me in appeal. Hirdey Ram's appeal is No. 676 of 1944, that of Harish Chandra is No. 677. The judgment of the learned Assistant Sessions Judge bears an even date in both the cases, namely, 31st July 1944. On 13th October 1942, a man named Hazari Lal was murdered. It was alleged that some dacoits had gone to the house of the deceased and demanded money for political activities. It might be mentioned that that was the time when the place was seething with political discontent and the scene of murder was in a ferment. On 2nd January 1943 Hirdey Ram was arrested and his

house was searched. Nothing incriminating was found and he was let off on bail on 3rd January 1943. On 8th January 1943, Hirdey Nath, a student aged 15 or 16 years was arrested and on 21st January he was granted pardon and he turned an approver. He made an elaborate confession which led up, among other things, to the re-arrest of Hirdey Ram and the arrest of Harish Chandra and Nitya Ram on 24th January 1943. On 30th January 1943, Harish Chandra and Hirdey Ram are alleged to have made some confession before the Deputy Superintendent of Police and the kotwal who brought the matter to the notice of the Superintendent of Police. The confession was to the effect that they had, in their possession, unlicensed arms and that they would deliver the same at their village Barjhala. The Kotwal, Thakur Rampal Singh and the Deputy Superintendent of Police, Rai Sahib Pt. Shiva Shankar Dube were ordered by the Superintendent of Police to go to the village Barjhala and take delivery of the arms. On 81st January 1943 these two officers started in the early morning with Harish Chandra, Hirdey Ram and Nitya Ram and reached Barjhala after a few hours and there Harish Chandra took out a fountain-pen pistol, Ex. 1 and a revolver, Ex. 2 from out of a stack of wood in front of his house and by the side of the lemon grove. Hirdey Ram also handed over a stick gun from a place inside his lemon grove. Nitya Nand made no such confession and nothing further was done against him. He may, therefore, be dismissed from consideration. The prosecution has examined Hirdey Nath, the approver in the Hazari Lal murder case as also the kotwal and the Deputy Superintendent of Police. It has also examined two witnesses, Sita Ram and Eambharosey as persons in whose presence the delivery was made by Hirdey Ram and Harish Chandra of the articles which formed the subject of the charge.

2. The defence was that Ulfat Rai was a respectable man of the village. He had a licence for arms. At the time of the disturbances when collective fines were imposed upon the whole village he was the solitary exception. This roused the jealousy, rather the enmity of the other inhabitants of the village and it is they who are at the bottom of the prosecution. The learned Assistant Sessions Judge has found that the witnesses for the prosecution told the truth, on the other hand, the witnesses for the defence did not inspire his confidence. H6 has, therefore, accepted the prosecution case and passed the sentence already mentioned. I must at the outset say that, I am vis-a-vis the approver in a slightly different

position from that of the learned Assistant Sessions Judge. He held that:

He is not a liar and that his statement is believable. Being a boy he had to yield in cross-examination and give confusing answers.

3. I have before me a judgment of this Court in Criminal Appeal No. 238 of 1944 which arose out of the murder of Hazari Lal. Two learned Judges of this Court have distinctly disbelieved the confession of this boy and held:

The same observation applies with equal force to the confession made by the approver Hirdey Nath and in some measure also to his subsequent evidence as a witness for the prosecution. It is an admitted fact that he was only about fifteen years of age at the time and he remained in police custody at least for eleven days before he made his confession which was recorded under Section 164, Criminal P.C. It is almost impossible to believe in these circumstances that the confession made by him was a voluntary statement. He has no doubt given a long story in his confession about his own life during a period of four or five years prior to the incident in question. He has described in great detail how he came to imbibe revolutionary ideas owing to his contact with one Jagar Nath Ghosh and was ultimately admitted as a member of revolutionary party and was initiated into the mysteries of the revolutionary cult by being taught various methods of preparing bombs. So far the story may be true, but it is irrelevant to the particular case which we have to consider. When he proceeds to connect himself and other persons with the particular crime with which we are concerned in this case, his confession as well as his subsequent evidence must be looked at with the greatest possible suspicion.... The fact that he has given his evidence on oath does not lend any real weight to what he says because his evidence on oath is after all founded upon his previous confession which was made in extremely suspicious circumstances and his oath cannot afford any guarantee that he is telling the truth because it has always to be born in mind that he has purchased his own immunity by agreeing to become a witness for the Crown.

4. The benefit of this judgment was not available to the learned Assistant Sessions Judge. Even if this judgment had not been before me, I confess, I would have felt considerable difficulty in subscribing to the view of the learned Assistant Sessions

Judge. The boy was fifteen years of age. The activities in which this youth claims to have participated required years of patient study and experience. This presupposes a life stretched over a number of years. When this young boy claims to have achieved so much within the short span of his life he says something which cannot be accepted without imposing a severe strain upon our credulity. I shall deal with the evidence of Rambharosey first. He is an ex-convict and stands condemned out of his own mouth. It is also clear from his statement that he is a creature of the police. That the relations between him and Ulfat Rai are strained is also clear. Ulfat Rai had made a complaint against him for dacoity. It is true that he was acquitted but that does not mean that he had no animus against the man who had tried to incriminate him. There is some other discrepancy between his version as regards the places where the articles were found out, and that of the police. To that I shall come when dealing with the police witnesses. It is, therefore, clear that Rambharosey is a man on whose testimony it is impossible to rely. I now come to the evidence of Sita Ram. He is the second and the last recovery witness. He lives four miles away from Mauza Barjhala, the residence of the accused. He is, therefore, a mere chance witness. That he should have reached the place at the psychological moment requires some explanation and that explanation is not forthcoming. It is, therefore, clear that there is no respectable witness of the village on whose evidence the Court can place implicit reliance. I now come to the two police witnesses, namely, Rai Sahib Pt. Shiva Shankar Dube and Thakur Eampal Singh, the Kotwal. I shall deal with Rai Sahib Pt. Shiva Shankar Dube first. His statement leaves no doubt that these offending articles, namely, the revolver, the fountain-pen pistol and the walking stick gun were found at places which were accessible to everybody. It has come in the evidence of the police witnesses that the place where the articles were found was not a 'safe place'. What precisely the meaning of this sentence is I cannot say, but this much is clear that it was an open and almost a public place. It is, therefore, not surprising if the plea in defence is that some of the enemies of the family had planted the articles from where they were recovered.

5. Much to the same effect is the evidence of the Kotwal, namely, Rampal Singh. I must, however, notice, as I have said before, the discrepancy between the police witnesses on the one side and Rambharosey and Sita Ram on the other with

regard to the places where these articles were found. The police witnesses say that two of them were found near the stack of the wood which was at the south end of the lemon grove. On the other hand, Rambharosey says that they were found at the south end of the grove on the west of which lies the tank. Sita Ram tells a different tale. He says that Exs. 1 and 2 were recovered from a spot four paces from the place of the stick gun. This is a departure from the statements of all the other witnesses, the two police witnesses and Rambharosey. Mr. Carleton, the learned Counsel for the appellants has strongly criticised the conduct of the police. He contends that on the statement of the Deputy Superintendent of Police himself his department is guilty of excessive zeal. The witness admits that

the police had not traced the culprit of Hazari Lal's murder and they were trying for it. I had issued orders that special attempt should be made to trace them. A.C.I.D. Inspector was also making enquiries.

The learned Counsel contends that the extra zeal displayed by the police must have caused consternation all round and it is not difficult to imagine if these two young men, Harish Chandra, aged twenty-eight, and Hirdey Ram, aged twenty-two, were terrified out of their wits and falsely implicated themselves in order to purchase peace. The argument is not entirely without substance, but I do not think it is necessary for me to express any opinion on it as I feel convinced that on the materials on the record it is not safe to convict either Harish Chandra or Hirdey Ram. The case may be examined from yet another and a legal point of view. The conviction against the appellant is under Section 20, Arms Act (11 of 1878). Section 20 refers to Section 19 and the relevant clause of that section is Clause (f) which makes punishable the possession or control of an arm in contravention of the provisions of Section 14 or Rule 15. Section 14 speaks of an unlicensed possession of firearms. Section 15 speaks of the possession of arms of any description without a licence. What, therefore, falls to be considered is the meaning of the expression 'possession' or ('control' within the meaning of Section 19, Clause (f). 'Possession' has been defined in Murray's Oxford Dictionary, volume VII as:

The action or fact of possessing, the holding or having something as one's own, or in one's control.

6. The family of Ulfat Rai must, in the absence of any evidence to the contrary, be deemed to be a joint Hindu family. This indeed, is the presumption of the Hindu law. It is true that the other members of the family have an interest by birth but this is only for certain limited purposes. So long as the head of the family is alive, the effective ownership and possession must be with the head. That head, in this case, is Ulfat Rai. The possession must, therefore, be deemed to be the possession of Ulfat Rai. Mr. David, the learned Counsel holding the brief of the learned Deputy Government Advocate contends that the word in Clause (f) is not 'exclusive possession' but 'possession' and possession may mean immediate possession or even control. To the meaning of 'possession' I shall advert a little later because that particular expression has been the subject of judicial pronouncement in a number of cases and it is not necessary for me to express a view of my own. I shall take up the word 'control'. 'Control' means effective control. Effective control cannot be that of the junior members of the family, it must be with the head or the karta of the family. Coming now to the word 'possession' it was held so far back as the year 1893 in *Queen-Empress v. Sangam Lal* ('93) 15 All. 129 that:

Where arms are found in a common room of the joint family house, it is incumbent upon the prosecution to give good evidence that such arms are in the exclusive possession and control of the particular member of the joint family who is sought to be charged with their possession.

7. The principle of this case was followed in *Khushi Ram v. Emperor* ('22) 9 A.I.R. 1922 All. 83, Mr. David had, however, referred to *Emperor v. Sikhdar* : AIR1932 All441 and contends that the section speaks merely of possession or control and not of exclusive possession. Apart from the fact that this is a single Judge decision, whereas the decision in the earlier case is a Bench decision, the facts of that case are distinguishable from those of the present. Besides, *Emperor v. Sikhdar* : AIR1932 All441 has been overruled in *Kaul Ahir v. Emperor* : AIR1933 All112 . Strong reliance has, however, been placed upon *Abdul Rahman v.*

Emperor ('40) 27 A.I.R. 1940 All. 499 where a learned Judge of this Court was of opinion that there was no warrant for interpreting possession as meaning exclusive possession and reading into the section something which was not there. It is not necessary to quarrel with this decision as, to my mind, its facts are entirely different from those of the present case. On the finding that

the spear was found in 'the front room' which formed the common entrance and was used by Abdul Rahman as a place to keep his odds and ends in and as a room in which he used to receive his visitors

there is no doubt that his conviction was perfectly legal. That it is not the case here. The articles, were found, as I have said before, at a place not in the use or occupation of a particular individual. The lemon grove or bush or the place where the goods were found belonged to the whole family but possession must be deemed to be with the manager or the karta. No other member of the family could be said to have been in possession of the same. I therefore allow the appeal and set aside the conviction and sentence and direct that the accused be released forthwith. If the appellant is on bail, he need not surrender.

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