

Ram Bharose and ors. Vs. Rex

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Court : Allahabad

Decided On : Jul-12-1948

Reported in : 1949CriLJ144

Judge : Bhargava, J.

Appellant : Ram Bharose and ors.

Respondent : Rex

Judgement :

Bhargava, J.

1. Lokpal Singh is a zamindar of village Lohari Khera; and for sometime he was the assistant secretary of the Chhatri Sabha in the District of Etah. One of the objects of the Sabha was to reclaim those Thakurs who had been converted to Islam. Five or six years before the occurrence Lokpal Singh took a prominent part in the conversion of a large number of nauMuslims of Nagla Aman Singh; and a year before the incident, which led to the prosecution of the appellants, namely, Earn Bharose and Fiddad Khan alias Fida Husain, a panchayat was convened at the house of Thakur Dhara Singh of Bijaura to arrange for the conversion of one Karan to Hinduism. The case for the prosecution was that while the panchayat was being held Sher Khan arrived there and prevented the conversion of Karan, who was his relation, and took him away with him: that this led to an exchange of hot words between Sher Khan and Lokpal Singh, and in consequence thereof the

nau-Muslims of Nagla Gohatia, who were related to Sher Khan, held a panchayat against Lokpal Singh; that in view of these strained relations on 27th November 1945, between 9 and 10 p. M., -while Lokpal Singh was returning with his servant, Ram Lai, from Hanuman Garhi in Etah, Mohammad Mir Khan, who had a pistol with him, Dalel Khan and the appellants came up and Mohammad Mir Khan placed the pistol on Lokpal Singh's chest and pulled its trigger; that Lokpal Singh caught the pistol and lowered its barrel, but it went off causing burns and injuries on his left calf and damaging his pyjama; and that Lokpal Singh raised an alarm and people came up and caught hold of Dalel Khan, while his companions managed to escape.

2. Lokpal Singh reported the occurrence at P. S. Etah, which was only five furlongs away from the scene of occurrence, at 9-30 p. M, the same night. A case under Section 307, Penal Code, was registered against Dalel Khan, Fiddan Khan, Bam Bharose and Mohammad Mir Khan. Mohammad Mir Khan was not prosecuted; even the complaint filed against her by Lokpal Singh was subsequently withdrawn. Dalel Khan, Bam Bharose and Fiddan Khan were prosecuted under Section 307 read with Section 34, Penal Code. Dalel Khan made a confession and stuck to it throughout. Bam Bharose alleged that he had been falsely implicated in that affair as he and his wife were in the service of Lokpal Singh and owing to maltreatment they had gone to village Gohatia and settled there with the help of Mohammad Mir Khan and others, who refused to turn them out in spite of the attempts made by Lokpal Singh and that Dalel Khan was in the service of Lokpal Singh. Fiddan Khan's case was that Dalel Khan, with whom he had a quarrel had got him falsely implicated in this case.

3. The Sessions Judge of Etah, who tried the case, found the appellants guilty and convicted them under Section 307 read with Section 84, Penal Code, and sentenced each of them to rigorous imprisonment for two years. This appeal has been filed on behalf of Bam Bharose and Fiddan Khan. Dalel Khan has preferred no appeal.

4. The learned Sessions Judge found that the appellants, Bam Bharose and Fiddan Khan, were members of the party which committed the assault on Lokpal

Singh. The finding is based upon the confession made by Dalel Khan which, in the opinion of the trial Judge, was corroborated by other evidence on the record.

5. In his confession Dalel Khan stated about Lokpal Singh arranging for the shuddhi of some nau-Muslims of Nagla Aman Singh, who were his relations by force; about Sher Khan and others engaging some dacoits to kill Lokpal Singh; about some consultations in the village in which he also took part; about Mohammad Mir Khan pressing him and others to accompany him and shoot Lokpal Singh; and about his accompanying him to Etah. He further stated therein that after reaching Etah he and Fiddan Khan remained standing on the road, towards the east of Hanuman Garhi, while Earn Bharose and Mohammad Mir Khan followed Lokpal Singh and fired a pistol at him from front and at that time he was twenty paces away; that Mohammad Mir Khan and Earn Bharose ran backwards while Fiddan Khan ran towards the north; and that when he attempted to run he fell down and was caught. He spoke about consultations in the village but did not say what they were about. He stated about his going with Mohammad Mir Khan, but added that he stayed behind when Mohammad Mir Khan went to shoot Lokpal Singh. He said about the firing of the pistol but did not say at or towards whom it was fired. His statement that Mahammad Mir Khan fired the pistol from front is negatived by Lokpal Singh's statement that it was placed on his chest and its trigger was pulled up and it went off when it was caught by him. The statement that he and Fiddan Khan were standing at a distance of twenty paces and he was caught when he fell down is also falsified by the evidence produced in the case, which shows that all of them were 50-Cr. L, J, 19 & 20 standing at one and the same place and he was caught because Bam Lai ran after him and a passer-by came from the opposite direction. The confession was, therefore, false and self-exculpatory; and the finding recorded by the trial Judge to the contrary was wrong.

6. The learned Counsel for the appellants contended that the confession being self-exculpatory and false in any case it could not have been used against the appellants; and in support of his contention he relied upon a Bench ruling of this Court reported in *King-Emperor v. Shambhu* : AIR1932 All228 . In his judgment at one place the learned Sessions Judge remarked that the confession was not

admissible in evidence against the appellants, but later on held that it could be used against them. The ruling referred to above was not followed by him in view of a later single Judge ruling of this Court reported in *Zahid Beg v. Emperor* : AIR1938 All91 . He should have followed the Bench ruling.

7. In the case reported in *King-Emperor v. Shambhu* : AIR1932 All228 , Mears C. J., and Sen J., observed:

The incriminating statement of a accused is no more than the tainted testimony of an accomplice. The statement is without the safeguards of either oath or cross-examination. When an accused person in his Statement or confession imputes the commission of the offence to his co-accused, but does not implicate himself as fully and substantially as he does his co-accused, the said statement cannot be used as evidence against the accused.

Allsop, J. in *Zahid Beg's case* : 1937 A. L. J. 1253: A.I.R. (25) 1988 ALL. 91 I 89 Cr. L. J. 864) interpreted these observations to mean that such confession, if uncorroborated, was of practically no value and should be ignored. We, however, find from the report that the main condition laid down for the admissibility of the confession was that it should make the maker as fully and substantially liable as his co-accused.

8. In *Zahid Beg's case* : AIR1938 All91 it was also pointed out that there was nothing in Section 30, Evidence Act, to suggest that a confession was not admissible in evidence against a person who was being tried jointly for the same offence with a man who had made the confession if the confession admissible the guilt of the person who made it and exaggerated the guilt of the other

9. Section 80, Evidence Act, runs thus:

When more persons than one are being tried jointly for the same offence, and a confession made by one of such persons affecting himself and some other of such persons is proved, the Court may take into consideration such confession as against such other person as well as against the person who makes such confession.

The words 'affecting himself and some other of such persona' are important and do suggest that before the confession made by one person can be taken into consideration as against other persona, who are being tried jointly with him for the same offence, it must affect the maker as well as others. If the statement does not affect the maker thereof or only ascribes to him a part not sufficient by itself to justify his conviction for the offence for which he is being jointly tried with others, it will not be a confession of the nature contemplated by Section 30. The underlying principle was thus explained by Straight, J. in *Queen-Empress v. Jagrup*, 7 ALL. 646 : 1885 A. W. N. 181).

What was intended was, that where a prisoner-to use a popular phrase- 'makes a clean breast of it', and unreservedly confesses his own guilt, and at the same time implicates another person who is jointly tried with him for the same offence, his confession may be taken into consideration against such other person as well as against himself, because the admission of his own guilt operates 'as a sort of sanction which to some extent takes the place of the sanction of an oath, and affords some guarantee that the whole statement is a true one. But where there is no full and complete admission of guilt, no such sanction or guarantee exists, and for this reason the word 'confession' in Section 30 cannot be construed as including a mere inculpatory admission which falls short of being an admission of guilt.

Therefore, the statement of Dalel Khan could not be used against the appellants.

10. The other evidence produced in the case was also of a doubtful character; and no conviction could be based thereon. (After reviewing the evidence, his Lordship concluded.) Moreover, there is no evidence on the record to show that there was any pre-arranged plan in pursuance of which the appellants had acted or even to show that the appellants had committed any criminal act in furtherance of any common intention. It was no doubt alleged that the appellants were present when Mohammad Mir Khan was said to have fired a shot from his pistol but their presence was not made out and it had not been shown that they had in any manner helped Mohammad Mir Khan. When Mohammad Mir Khan was not even prosecuted or held responsible for the alleged crime, the appellants, in the

circumstances of the case, could not be convicted under Section 307 read with Section 34, Penal code. In my opinion, therefore, the conviction of the appellants was wrong and must be set aside.

11. The appeal is, therefore, allowed and the conviction of and the sentence imposed upon the appellants are set aside. They are on bail and need not surrender. The bail bond executed by them are cancelled.

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