

Emperor Vs. Baldeo Koeri and ors.

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Court : Allahabad

Decided On : Apr-09-1931

Reported in : AIR1931All712

Appellant : Emperor

Respondent : Baldeo Koeri and ors.

Judgement :

1. Baldeo Koeri, Bisheshar, Sahadeo, Hemraj, Lurkhur, Ramdeo, Munnu, Deoraj, Sukhraj, Khurkhur, Jaisri, Jhullar, Girja Dasaundhi, and Ramadhar were committed to the Court of Session at Jaunpur to take their trial under Sections 307/149 and 148, I.P.C. Of the above persons Baldeo was also charged of an offence under Section 302, I.P.C.

2. Twelve of these persons are residents of Pindri; they are Koeris by caste and are related. Two of the accused, namely, Girja and Ramadhar are Dasaundhis by caste. They have got no interest in Mauza Pindri. They are residents of Mauza Nageshra.

3. The learned Sessions Judge acquitted Baldeo under Section 302, I. P.C. He acquitted all the 14 accused persons of the offence under Sections 307/149, I.P.C. He also acquitted Baldeo, Jaisri, Jhullar, Girja and Ramadhar of the offence under Section 148, I.P.C., but convicted Bisheshar, Sahadeo, Hemraj alias Hannu, Lurkhur, Ramdeo, Munnu, Deoraj, Sukhraj and Khurkhur under Section 148, I. P.

C' and sentenced them to various terms of imprisonment.

4. The Local Government has appealed from the order of the Sessions Judge : (1) acquitting Baldeo under Sections 302, 307/149 and 148, I.P.C., (2) acquitting the remaining 13 persons of the offence under Section 307/149, I. P.C., and (3) acquitting Jaisri, Jhullar, Girja and Ram Adhar of offences under Section 148, 1. P. G. This is Criminal Appeal No. 930 of 1930.

5. Bisheshar and eight others, who have been convicted under Section 148, I. P.C., and sentenced to various terms of imprisonment, have also appealed to this Court. Their appeal is No. 701 of 1930.

6. There is yet another appeal. This is Criminal Appeal No. 656 of 1930. A counter-charge under Section 148 was preferred against certain Thakurs who were residents of Patti Kiratrai. The learned Sessions Judge convicted five of the Thakurs, namely, Ramadhin Singh, Bindeshwari Singh, Parsidhi Singh, Chulbul Singh and Ram Lal Singh and sentenced them to various terms of imprisonment. These five persons have challenged the legality and correctness of the conviction.

7. On 21st March 1930, a serious riot undoubtedly took place in Mauza Pindri, which is 18 miles from the city of Jaunpur. In the course of this riot, one Murao Singh, Thakur, of Patti Kiratrai, was killed. Two other Thakurs, Bindeshri Singh and Chulbul Singh, who were related to Murao Singh, were injured, on 22nd March 1930; a post mortem examination was held on the corpse of Murao Singh and it was found that he had received a penetrating wound $2/3'$ x $1/4'$ in the third intercostal space, near sternum. The Civil Surgeon was of opinion-that the cause of death was the penetrating wound of the heart. Bindeshri Singh had received two injuries and Chulbul Singh had received no less than eight injuries, two of which have been described to be dangerous.

8. The charge of murder was brought against Baldeo and it was alleged that he was responsible for the fatal injury caused to Murao Singh. The charge of attempt to commit murder was brought against the 14 accused upon the ground that the injury sustained by Chulbul Singh was so very serious as was likely to cause death and that the said injury had been caused in pursuance of a common object.

9. The evidence on the record proves to our satisfaction that there has been in the past considerable strained relations between the Thakurs of Patti Kiratrai and the Koeris of Mauza Pindri. It is very difficult to say as to what was the exact cause which led up to the riot. The evidence produced by the parties assigns different reasons as to the origin of the fight. We find it extremely difficult to believe the evidence of one party or the other. The result is that the origin of the quarrel must remain for ever shrouded up in mystery.

10. There can however be no doubt that there was a fight between the Thakurs and the Koeris. Amongst the Koeris, the persons who were hurt were Hemraj, Sahdeo, Munnu, Bisheshar, Khurkur Sukhraj and Lurkhur. Amongst the Thakurs, the persons who received hurt were Murao Singh, the deceased, Bindeshri Singh and Ghulbul Singh.

11. The Thakurs lodged a police report at the Rampur Thana on the day of the occurrence, but this report was made after unusual delay and the cause for the delay has not been accounted for. This is a suspicious circumstance. In such cases there is always a strong temptation to conceal the truth, to exaggerate matters and to drag the names of as many opponents as possible into the net. This appears to have been done in this case. Bindeshri Singh did not go to the police station in person. He sent a written note through Sarju Dharkar. The report was made against nine persons and the persons alleged to have taken part in the riot are Baldeo Koeri, Lurkhur Koeri, Sukhraj, Hannu, Bisheshar, Khurkhur, Girja Dasaundhi and Ram Dhar Dasaundhi, It was not alleged that Sahdeo Ramdeo, Munnu, Jaisri and Jhullar had taken part in the riot. When the case came up before the Magistrate it appears that the case had gathered embroidery and five additional names were introduced and the last five mentioned persons were also alleged to have taken part in the riot from the side of the Koeris.

12. Mauza Pindri appears to be a hamlet of Mauza patti Kiratrai. The village appears to be torn by factions which are led by the chief of the Koeris and the head of the Thakurs. An attempt has been made in this case to involve in the riot almost all the members belonging to the family of Baldeo Koeri.

13. Upon the evidence which has been produced in this case it is very difficult to find out either the cause of quarrel or the fact as to which of the two parties was the aggressor in the fight. We are convinced however that there was a free fight between the Koeris and the Thakurs and it is not unlikely that the Koeris outnumbered the Thakurs. The learned Sessions Judge did not believe that the two Dasaundhis, Girja and Ram Ad liar, had taken part in the fight. They were persons belonging to a different caste. They belong to different village and they had no interest in the dispute between the Koeris and the Thakurs. In agreement with the Sessions Judge, we hold that no case has been made out against the two Dasaundhis. One of the witnesses for the prosecution states that these two Dasaundhis were on terms of intimacy with Baldeo, but this statement is evidently based on hearsay.

14. In the fight the Thakurs and the Koeris appear to have been armed with lathis and a few spears. Pucbai Ahir, one of the witnesses for the prosecution states:

I do not know which of the accused persons had spears and which lathis... I do not know if Lurkhur, Deoraj, Bisheshar, Sahdeo, Ramdeo, Girja and Ram Adhar used spears or lathis.

15. It is doubtful if Baldeo Koeri was present at the riot at all. He is a fairly old man. There are no marks of injury on his person. Murao Singh was a pahalwan and an expert lathi fighter. Baldeo could not seriously think of engaging himself in a fight with Murao Singh. The Sub-Inspector in the course of the investigation in this case is alleged to have discovered a spear-stick from a stack of bhusa in Baldeo's house. Curiously enough, this discovery was not followed up to its legitimate conclusion. The spear was not sent to the Chemical Examiner and the Imperial Serologist. There is no evidence that the spear had any marks of blood which it was bound to have, if this spear had been used in killing one man and seriously injuring another as alleged by the prosecution.

16. We have no doubt, that on the evidence as it stands, it was extremely unsafe to convict Baldeo of an offence under Section 302, I. P. C, or of any other offence with which he stood charged.

17. Baldeo produced in this case a considerable mass of evidence to prove that, at the time of the riot, he was actually engaged with his pleader at Jannpur. An application was presented in the Court of the Judge of Small Causes at Jaunpur on 21st March 1930, in which it was prayed that, a suit, which had been dismissed for default of appearance, might be restored.

18. The time of the riot was early in the morning between the hours of 6 and 7. The affidavit which purports to have been sworn by Baldeo, discloses that it was presented before the Commissioner of Oaths between the hours of 7 and 8. We have not the slightest doubt that the time given in the affidavit is wrong, and that the document has been tampered with and written over. Four witnesses have been examined in support of the alibi. These are Pandit Jagannath Pande, Vakil, Babu Tilakdhari Singh, Vakil, Thakur Chhatar Dhari Singh, Vakil, and Sat Narain Lal. We do not think it necessary to discuss this evidence in detail. We are convinced that those witnesses are not witnesses of truth and that the story of Baldeo's presence at Jaunpur, on 21st March 1930, between the hours of 7 and 8 in the morning is absolutely false. We want to have it clearly understood that it does not follow from the fact that this evidence is false either that Baldeo was present in Pindri about the time of the riot or that he was not or could not have been present at Jaunpur some time in the morning. It is not necessary however to canvass this matter any further.

19. The case for the prosecution rests mainly upon the statements of six eyewitnesses. Two of them, Bindeshri Singh and Chulbul Singh, are highly interested witnesses. The remaining four are men of no status or position: one of them, Munnu is a chamar by caste and is resident of a hamlet close to the residence of the Thakurs. The other three witnesses are Ram Kishore, barber, Kihirodhar Lohar and Phuchai, Ahir. All these witnesses are residents of patti Kiratrai. Ran Kishore and Phuchai are the parjas of the Thakurs. Bindeshri Singh is the mukhia of the village. These witnesses are clearly amenable to the influences of the Thakurs.

20. It appears from the statements of the prosecution witnesses that at the time of the riot, people other than those, who were residents of patti Kiratrai, were also

present. It has not been explained why these witnesses have not been produced by the prosecution. We are of opinion that we should not interfere with the order of acquittal. The offences under Sections .307/149 have not been brought home to any of the respondents. The case against Baldeo has not been proved under any of the three sections under which he stood charged. Upon the evidence on the record, it will be extremely unsafe to interfere with the finding of acquittal recorded by the Sessions Judge with reference to Jaisri, ,Jhullar, Girja and Ram Adhar. We would therefore dismiss this appeal (Criminal Appeal No. 930 of 1930).

21. In Criminal Appeal No. 817 of 1928 which was decided by the learned Chief Justice and one of us on 25th November 1929, the principles which should guide this Court in entertaining an appeal from acquittal by the Local Government, have been discussed at some length. We would reproduce the following passage from the judgment:

An appeal from an acquittal is an extraordinary remedy and the right to appeal received a statutory recognition for the first time in the year 1872. Certain conditions peculiar to this country called for this provision of law. The rules and the limitations affecting appeals from acquittals are on a par with those relating to appeals from convictions; see *Empress v. Pragdutt* [1898] 20 All. 459, and the plain language of Section 423, Criminal P. C, clearly indicates that the legislature never intended to recognize any difference between the two.

22. An appeal from the verdict of the jury stands upon a different basis. In an appeal from an order of acquittal it ought to be remembered that there is always a presumption in favour of the innocence of the accused. This presumption very materially affects the question of onus, which except within a limited range of cases lies upon the Crown, and where the finding of the subordinate tribunal is in favour of the accused, the burden lies upon the prosecution to prove that the finding reached by the Court below, was not justified by the evidence. Where the evidence against the accused is too scanty or insufficient to support the charge, the finding of the Court below cannot be displaced. Again, where the case is somewhere on the border line or very near it and it was possible for the Court, upon a balance of probabilities, to hold a person guilty or not guilty, the reversal of

the order of acquittal is not only undesirable and inexpedient, but is calculated to cause a miscarriage of justice. Where however the balance of evidence is distinctly against the accused or where material evidence has been misappreciated, overlooked or ignored, this Court is bound to step in as much in the interest of the administration of justice as of the public generally. Certain principles therefore have been laid down by this Court indicating the course which should be followed for the adjudication of the Government appeals. In *Empress v. Gayadin* [1881] 4 All. 148, Straight, J., is reported to have observed:

It is not because a Judge or a Magistrate has taken a view of a case in which Government does not coincide, and has acquitted accused persons, that an appeal from his decision must necessarily prevail, or that this Court should be called upon to disturb the ordinary course of justice, by putting in force the arbitrary powers conferred on it by Section 272. The doing so should be limited to those instances in which the lower Court has so obstinately blundered and gone wrong as to produce a result mischievous at once to the administration of justice and the interest of the public.

23. We accept this statement of law with a slight variation. If the lower Court has obviously blundered, we have a clear duty to interfere. It is not necessary that the lower Court should have 'obstinately blundered' or erred in its conclusion 'egregiously and foolishly.' The aforesaid decision was followed in *Empress v. Gobardhan* [1837] 9 All.528. In *Empress v. Robinson* [1894] 16 All. 212, Tyrrell and Blair, JJ., have adopted with approval the following view which was expressed in *Gayadin's* case:

In considering an appeal by Government against an order of acquittal, it is not for the High Court to say whether, if it had been trying the case, it might not have taken a view opposed to that of the lower Court. That is not the test to be applied to determine such an appeal. While the High Court recognizes the necessity for the existence of such powers in the Local Government in this country, it is equally clear that those powers should be most sparingly enforced; and, in respect to pure questions of fact, only in those cases where, through the incompetence, stupidity or perversity of a subordinate tribunal, such unreasonable or distorted conclusions

have been drawn from evidence as to produce a positive miscarriage of justice.

25. In *Empress v. Timmal* [1899] 21 All. 122, Knox, Ag.C.J., and Banerji, J., emphasized upon the proposition that

the right vested in the Local Government is a right which should be advanced with care and caution. At the same time it should undoubtedly be exercised when the need for it is apparent.

26. We approve of what has been said above. Applying the canons laid down in the decided cases of this Court, we are clearly of opinion that the appeal filed by the Local Government could not be supported. If we were sitting in this case as a Court of first instance, it might have been possible for us to take a view of the evidence in certain aspects different from that of the Court below. We are not however in a position to state that the view of the learned Sessions Judge was not a possible view or that his judgment is perverse. In a case like the present where the evidence is entirely conflicting, where both the parties have consciously produced before the Court perjured evidence and where the real motives, which led to the fight between the Thakurs and Koeris, cannot be known nor can it be ascertained with anything like reasonable certainty as to whose lathi or spear struck whom, the one sure ground upon which the learned Sessions Judge could have proceeded is by the marks of injury upon the persons of those, who were charged with the offence. In the midst of uncertain ties this was the one certain factor to go upon. The learned Sessions Judge was therefore justified in giving proper weight to this one important circumstance.

27. We have already noticed that he has convicted nine of the Koeris of an offence under Section 148, I. P.C. The learned Sessions Judge has not however taken into consideration the fact that two of these persons, namely, Ram Deo and Deoraj had no marks of injury. We are of opinion that it could not be said about these two persons with anything like reasonable certainty that they had taken part in the riot. We would therefore give them the benefit of the doubt. We accordingly allow the appeals of Ramdeo and Deoraj. As to Bisheshar, we are of opinion that he is also entitled to the benefit of the doubt. The learned Sessions Judge observes about him that he is an old man of 60 and is nearly blind. We do not think that it could be

at 'all probable for Bisheshar to have taken part in the riot. It is true that he had some marks of injury upon his person. It is not improbable that he might have been made a victim of the assault on the part of the Thakurs, and the marks of injury were due to this fact and to the fact that he had himself taken part in the assault. We would accordingly allow his appeal, set aside his conviction and sentence and direct his release. We dismiss the appeals of Sahdeo, Hemraj alias Hannu, Lurkhur, Munnu, Sukhraj and Kurkhur. We are informed that these persons are on their bail. We direct that they must surrender to their bails. Sahdeo Singh has not been admitted to bail and has already served his sentence imposed upon him of six months' imprisonment. Let him be released forthwith, provided he is not required for any other offence.

28. Lastly, we come to the appeal of the Thakurs. Upon the evidence, there can be no reasonable doubt that the Thakurs took part in the riot. The origin of the quarrel not being known, it could not be said that one or other of the party had the right of private defence. It is true that there is no evidence to show that the fight was either pre-arranged or premeditated. At the same time there can be no doubt judging from the manner in which the attacks were made by one party upon the other that the fight was deliberate. We are convinced that Bindheshri Singh and Chulbul Singh had taken part in the fight. The marks of injury upon their persons are sufficient proof of the fact that they were participators in the assault. The learned Sessions Judge was not justified in convicting Parsidhi Singh and Ram Lal Singh. Their case is on the same footing as those of Ramdeo and Deoraj Keori. They had no marks of injury on their persons and are entitled to the benefit of the doubt. We accordingly allow their appeals and set aside their convictions and sentence under Section 148, I.P.C.

29. The only mark of injury upon the person of Ramadhin Singh is a very minute scratch near his eyelid measuring no more than 3-10 of an inch by 1-10 of an inch. The explanation of Ram Adhin Singh is that the scratch was caused by a child whom he was carrying in his arms. There is nothing improbable in this explanation. . The trivial injury might have been caused by anything. It would be absurd and preposterous to hold that a scratch of this description is proof of the fact that Ram Adhin Singh had taken part in the riot. There is no other evidence against him on

which we could rely. We accordingly allow his appeal and set aside the conviction and sentence passed against him. The result is that we dismiss Appeal No. 930 of 1930 and allow Appeals Nos. 656 and 701 of 1930 to the extent indicated above, and we dismiss the rest of the appeals.

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