Ram Das Vs. Emperor

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Court : Allahabad

Decided On : Mar-26-1945

Reported in : AIR1945All385

Appellant : Ram Das

Respondent : Emperor

Judgement :

Braund, J.

1. This is an appeal by a man named Ram Das who has been convicted by the Additional Sessions Judge of Ballia for offences under Sections 395 and 435, Penal Code, and Rule 35 of the Defence of India Rules. He has been sentenced to five years' rigorous imprisonment, together with a fine, under Section 395, Penal Code, and to three years' rigorous imprisonment under Section 435, Penal Code. Under Rule 35 of the Defence of India Rules, he has been sentenced to three years' rigorous imprisonment.

2. In my opinion, on the evidence as it stands in this case, the appellant ought not to have been convicted under either Section 395 or Section 435, Penal Code. The case is one which arises out of the disturbances of August 1942, and, in particular, out of certain incidents that took place at a place called Ratanpura on 16th August 1942. It is said that a mob of some four hundred or five hundred people, after holding up a railway train, attacked and looted both the post office and the

Government seed store of the place. They burnt the records in the post office, destroyed its books, and carried away both cash and postage stamps. There is not, I think, any evidence that they actually burnt the seed store, but they broke it open and carried off part of its contents. Originally four men were committed for trial. Of these three have been acquitted and only the appellant, Ram Das, was convicted. At the trial there were seven witnesses of the events which happened. The first was the Branch Postmaster. The learned Judge has been unwilling to believe this man, because he gave a number of very lame answers in cross-examination. I am inclined to agree with the learned Judge. But even if one does accept his evidence, it does not amount to much. He does, it is true, say that he recognised the appellant 'in the above mob.' But when that was tested in cross-examination, it appeared that the real facts were that the Postmaster merely saw the appellant standing in the crowd that had collected at a considerable distance from the post office itself. At the time there were some men in the post office building who were looting it and the rest were outside, filling the courtyard in front of the post office, while extending out beyond it there was a further large concourse of people. It was, if I have understood the plan correctly, in the outer fringe of this crowd that the appellant was standing at the point Z. It has to be observed also that the Postmaster, in common with every other witness, says no more than that he saw the appellant standing in the crowd. He nowhere says that he saw the appellant doing, or, trying to do, anything. The next witness was Sadho Saran Singh, who did not identify the appellant at all. The next one is Ram Khelawan Singh, who gave evidence as to what he saw at the gate of the seed godown. He says that he saw the crowd snatch the key of the gate of the seed godown, break into it and carry away bags. He adds that 'in this mob, I recognised.... Ram Das....' But again in cross-examination all he could say was:

I cannot say what each of these accused was doing when the post office and the seed godown were looted.

This evidence has, I think, to be read in conjunction with the evidence of the next witness as to what happened at the seed go-down. The next witness, Inderdeo Tiwari, says: 'When I reached the place near the well I saw Ram Das accused standing at the gate of the seed godown. I do not remember to have seen Ram

Das accused doing any other thing besides standing at the gate of the seed godown.' Then follows the evidence of the three chaukidars who have been produced by the police. The' learned Judge, for what appears to me to be good reason, has not been prepared to believe a word that any of these chaukidars has said. I am not prepared to disagree with him. In this state of the evidence, all we have got is four witnesses-one of whom is, in any case, not a very satisfactory witness-who say, in effect, that they saw the appellant either on the outskirts of the crowd or standing at the gate of the seed godown, in each case, doing nothing in particular. It is true that on this evidence he must be taken to have been in the crowd, or, as the witnesses themselves described it, 'in the mob.' Looking now at the sections of the Act under which the appellant has been charged, I find from reading Sections 395 and 391, Penal Code, that a man is not guilty of dacoity unless he has ''committed,' 'attempted to commit' or 'aided in committing' robbery. I cannot bring myself to believe that evidence that a man was standing in a large crowd which overflowed into the public street can be satisfactory evidence that he was actually 'committing' a robbery. Nor, to my mind, is it evidence that he was actually 'attempting to commit' a robbery or even 'aiding in the commission of' a robbery. There is not a word of this evidence which is not consistent with the appellant finding himself in the crowd and not being able to get out of it, or foolishly idling his time away as a spectator of what was going on. It seems to me that, if the prosecution sets out to bring home a particular specific act to an accused person, they must do it with something approaching precision. There are sections, such as Section 149, Penal Code, which the prosecution might have relied on to overcome this difficulty had they been minded to use them, but they have not, and I think that they have altogether failed to establish any specific charge under Sections 395 and 435. I have no alternative but to acquit this appellant of the charges under Sections 395 and 435, Penal Code. There remains, however, the charge under Rule 35, Defence of India Rules. The rule runs that:

(1) No person shall do any act with intent to impair the efficiency or impede the working of, or to cause damage to (a) any building, vehicle, machinery, apparatus or other property used, or intended to be used, for the purposes of Government or any local authority....

and by Sub-rule (3) of the same rule it is provided that:

If any person approaches or is in the nighbourhood of any such building, place or property as is mentioned in Sub-rule (1), in circumstances which afford reason to believe that he intends to contravene that sub-rule, he shall be deemed to have attempted a contravention thereof...

3. On the present evidence, I am satisfied that the only reasonable conclusion that can be drawn from it is that the appellant was in the 'neighbourhood' of the Post Office and the seed godown at the time that the former was burnt and the latter was looted. The only question that remains is whether his presence there was 'in circumstances which afford reason to believe that he intended to contravene' Sub-rule (1) of Rule 35. This is an entirely different thing from bringing home to an accused person some positive act or acts as required by the substantive sections of the Indian Penal Code. I am, I think, entitled to bear in mind both the occasion and the circumstances, and I am also entitled to consider that the appellant himself has offered not the slightest explanation of his own presence. Indeed he has denied his presence. That I disbelieve, and it is a fact which I am entitled to consider in forming my own conclusion whether there is no reason to suppose that the appellant's presence in that crowd was suspicious. In my view, it is not possible to suppose that the appellant was there without any intention to take part in some form and at some time in what was going on and thereby, according to the definition, to attempt a contravention of Rule 35.

4. I have been asked to say that a building used as a Post Office or for the storage of Government seeds is not a 'building...used, or intended to be used, for the purposes of Government...' within the meaning of Rule 35(1)(a). It is suggested that some distinction ought to be drawn between what is used for the abstract administrative purposes of Government and what is used by the Government for quasi commercial purposes such as the administration of postal services or the maintenance of such stores of food as Government finds it necessary for any purpose to hold. To my mind, the wording of Rule 35 justifies no such distinction. It seems to me that the maintenance of postal services is a function of the Government which in fact it has assumed; and that a building maintained and used

by the Government for the purposes of its postal services is a building 'used for the purposes of Government.' In the same way, I have little doubt that the keeping and storage of seeds to be used for public purposes was in this case a de facto function of the Government and that the building in which the seeds were kept was a building 'used for the purposes of Government.' I can see no real difference between what is used for Government purposes in an abstract or administrative sense, and what is put by Government to some active use in connexion with one of its specific public activities. For these reasons my opinion is that this appeal against the conviction under Rule 35, Defence of India Rules, must be dismissed. I see no reason to interfere with the sentence in respect of this conviction. In the result the appeal is allowed in respect of the sentences and convictions under Sections 395 and 435, Penal Code, but is dismissed in respect of the conviction and sentence under Rule 35, Defence of India Rules.