

**Ramhit Vs. Emperor**

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**Court :** Allahabad

**Decided On :** Feb-09-1934

**Reported in :** AIR1934All776

**Appellant :** Ramhit

**Respondent :** Emperor

**Judgement :**

**Thom, J.**

1. The appellants in these three appeals have been charged and convicted under Sections 302/149, Penal Code, and sentenced to transportation for life. All the appellants were charged in connexion with, a riot on 7th June 1931, in the village of Bhatwaria, which is about 40 miles from Allahabad in the course of which at least seven persons have been proved to have been murdered. The appellants in Appeals Nos. 220 and 574 of 1933, absconded. Ram Sarup the appellant in Appeal No. 220 of 1933 was arrested on 17th June 1932 and Gopal the appellant in Appeal No. 574 of 1933 was arrested on 6th December 1932. As the appellants in all the three appeals have been convicted in connexion with the same occurrence it will be convenient to consider the three-appeals together. The events of 7th June 1931 have been exhaustively discussed by the learned Sessions Judge in Appeals Nos. 288 and 574 of 1933 and we consider it unnecessary therefore to as more than refer briefly to the main facts at this stage.

2. One of the murdered men Mohammad Jawwad was the sole proprietor of the village of Bhatwaria. Sometime in the month of May 1931, Jawwad accompanied by three or four of his servants went to the village to collect rent. The tenants however who had been affected by the no rent campaign refused to pay. On their refusal it is proved that Jawwad and his servants ill treated a number of the tenants, who however offered no violent resistance. Jawwad then left the village with his servants, but warned the tenants that he would return in the course of ten days to collect rents and threatened them with harsher measures should they again refuse to pay. Four days prior to 7th June 1931, Jawwad sent Gulzar Khan, P.W. 1, one of his servants, to the village to inform the tenants that he proposed on 7th June 1931, visiting the village for the purpose of collecting rents.

3. On the 7th June, at about 8 a.m., Jawwad accompanied by about 25 men arrived in the vicinity of the village. Jawwad's party was armed with lathis and Jawwad himself had a gun. On approaching the village they observed a large crowd consisting of several hundreds of the tenants armed with lathis congregated at the outskirts of the village. It was obvious that the tenants intended to resist the collection of rents by force. Jawwad and his party however continued to advance towards the village until they approached the margin of a large tank on the other side of which the crowd was congregated. There they stopped and Gulzar Khan, P.W. 1, was sent by Jawwad to summon the leaders amongst the tenants, namely, Narain and Sallahi. Narain and Sallahi obeyed the summons and when Jawwad inquired of them why the tenants had congregated in force they reminded him of his harsh treatment of the tenants on his last visit to the village and of his threat on that occasion. They informed him further that the tenants had assembled with the object of resisting him if he attempted to carry out his threat. Jawwad thereupon replied that he did not propose to resort to force if the tenants paid him a proportion of the rent at least to enable him to pay the Government Revenue. Narain and Sallahi then said that they would go back and discuss the matter with the tenants. Shortly afterwards they returned and informed Jawwad that the tenants would not pay the rent until they had been advised to do so by their leader one Gayadin Pundit of the village of Bais Kanti whom they had sent for. They further informed Jawwad that there were a number of Congress volunteers in the crowd who had demanded from Jawwad one anna each for their charban. Jawwad

retorted that he had come to realise his rents and not to feed the Congress volunteers. Narain and Sallahi then returned: to their companions. Shortly afterwards according to the prosecution evidence two large bands of more than 100 each, one led by Gayadin Pundit and the accused Nandji and the other by Lal Bahadur arrived from Bais Kanti and Sehna and joined the assembly of tenants at the tank at Bhatwaria. Later smaller bodies of villagers came from the direction of other villages in the vicinity and eventually the number at the tank rose to almost a thousand. After the lapse of a short interval Jawwad evidently hoping for an amicable settlement and called to the crowd 'Are you going to pay any rent or shall I go back?' At this stage according to the prosecution evidence Gayadin Pundit and Nandji came to the forefront of the crowd and shouted back to Jawwad 'wait and take some of your rent. Do not go back empty handed.' They then turned to the crowd and shouted 'Now beat them. Do not let them escape.' From that moment it became clear that the crowd intended to resort to violence. They showered clods and brickbats on Jawwad and his party. Jawwad endeavoured to argue with the crowd and threatened to shoot them if they did not desist from throwing the brickbats. This had no effect upon the mob which was now completely out of control. Jawwad then fired two shots in the air in the hope of frightening the mob. This action also had no effect however and the mob advanced upon Jawwad and his party who thereupon began to retreat. Jawwad endeavoured to keep the crowd at bay by shooting into it at intervals. The evidence shows that he fired 25 or 30 shots. This exhausted his ammunition. Thereafter the crowd could no longer be kept at bay. They pursued and overtook Jawwad and his party and battered Jawwad and six of his servants to death.

4. Following upon the riot and the murder of Jawwad and his servants 72 persons were challaned; 8 absconded; one Gaya Din died in jail; 12 were discharged by the Committing Magistrate; 51 were committed for trial, and 44 were convicted in the main case. As already observed Ram Sarup and Gopal were subsequently arrested and tried separately. The police eventually recovered the bodies of 8 persons who were alleged to be murdered. According to the post mortem report however one of them must have been dead several days before 7th June 1931. The presence of this corpse on the scene of the occurrence has not been satisfactorily explained, but in the present appeal this is a matter of no importance.

5. In connexion with the occurrence three first information reports were lodged with the police :

(1) by Fazal Abbas was recorded about 11 a.m., on 7th June 1981, at police station Pachhim Sarira. It appears from the evidence that one of Jawwad's party Zahar Khan escaped early from the scene and informed Jawwad's brother Razzaq a neighbouring zamindar that the tenants of Bhatwaria were attacking his brother. Razzaq immediately sent Fazal Abbas to make a report to the police and he himself repaired at once to the scene of the occurrence;

(2) a further first information report was made by Sardar Pasi, the chaukidar of Bhatwaria, at 6 o'clock in the evening. This report is upon the face of it false and Sardar Pasi himself was subsequently arrested and convicted in connexion with the riot and murder, and

(3) the third report was made by Razzaq. As already noted Razzaq on receiving information of the occurrence started for Bhatwaria accompanied by some of his servants. A short distance from Bhatwaria he was met by two survivors of Jawwad's party, namely Gulsher and Raza Khan who informed him that his brother had been killed. He proceeded further towards the scene of the incident and on the bank of the river Kilnahi which runs past Bhatwaria he found Gulzar and Zaliir Khah who were also of Jawwad's party. A little further on he found Nabba, son of Dost Mohammad lying under a babul tree severely injured. A little further on still he found the body of Jaw wad and the other six who had been murdered. He decided there and then to draw up a report of the occurrence to be handed to the police. About this time he was joined by one Sageer Husain, P.W. 2, a relation of Jawwad. The report which hereinafter is referred to as the first information report, was written out by Sageer Husain to Razzaq's dictation. Razzaq's evidence in the Sessions Court in regard to the drawing up of his report is as follows:

It was very hot and loo was blowing. Then I thought of sending a complete report. In the meantime Asgar Husain was seen coming, i.e., Asgar Husain, P.W. 2. He came to me and I suggested sending a complete report. I told him I made a report that did not represent the facts of this case.

6. This refers to the report which was made early in the day by Fazal Abbas.

I gave Asgar Husain a fountain pen and a sheet of paper. I questioned Gulzar Khan, Zahir Khan, Raze Khan and Gulsher Khan and went on dictating the report which Asgar Husain took down. I gave the names of the assailants as I learnt from these people and Nabba. I angrily asked Gulzar Khan that he should give the names of the murderers. Gulzar Khan gave the names of the murderers and I had them noted in the report under the mahuwa tree.

7. This report which was drawn up shortly afterwards and at the scene of the occurrence on information supplied by eyewitnesses who had been members of Jawwad's party is a document to which the prosecution attach special significance. That report is in the following terms:

To the Section I, Police Station, Pachhim Sarira. Dear Sir, I hereby make the following report:

Mohammad Jawwad had asked the servants of mauza Bhatwaria to make payment of rent on Sunday, 7th June 1931, and according to the information he reached mauza Bhatwaria this morning in the company of 15 or 16 men and saw that about 500 or 600 congress volunteers and cultivators were assembling outside the village. Jawwad Mian stopped outside the village and sent Gulzar Khan, the Sipahi of the circle to the tenants in order to inquire as to why there was so much crowd without any reason and to speak to them that they should pay rent to such an extent as was possible. Accordingly Narain Lodh came to Mohammad Jawwad. Mohammad Jawwad asked him to pay Rs. 2 each or Rs. 4 each as much as they could, so that he might be able to pay Government revenue, and he replied that he would make an arrangement and that something would be paid by the noon. Shortly afterwards a large number of persons came from the neighbouring villages, i.e., Bais Kanti, Sehna, Kabraha, Maraini (?) Para Bhawani, Bahman Kanti, Gopal Misra ka Pura and (paper torn) and having shouted 'beat, beat' commenced the attack. Mohammad Jawwad and other took to flight with their men. The dead bodies of (1) Mohammad Jawwad, (2) Badan Mian, (3) Azhar Husain, (4) Ausar Husain, (5) Makhdum, (6) Akbar Husain and (7) Hussa have been found and there is no trace of a few men. Mohammad Jawwad had taken

with him a cart in order to bring grain kept in the collection house at Bhatwaria.

All the articles belonging to him kept in the cart, viz one copper lota (jug) engraved having moon prints, one plain copper lota, engraved farshi of Moradabad make, two sagars, two sacks of flour, abouts 10 seers of sugar, one copper cup of Moradabad make, two plain farshis, two pieces of gunny bag, one dining cloth, one dhoti of golden border, and one red jalabidar (circular) naicha (smoking tube) have all been looted. It has been known from Gulzar Khan and others who were in the company of Jawwad Mian that the following persons are particularly the assailants: Ram Dhani Lodh, Sallahi Lodh, Ram Autar Lodh, Raghubir Lodh, Narain Lodh, Adhar Lodh, Sardar Pasi and Gopal Pasi, residents of Mouza Bhatwaria and Baldeo Kunbi, Puranwa Pasi, Ram Bhajan Pasi, Ram Het Brahman, Jeorakhan Kurmi and Sabsukh Kurmi, residents of Baig Kanti and Darshan Pasi, Sheoambar Pasi, Badla Pasi, residents of Bahman Kanti, and many other persons. The gathering is said to be of more than 1,000 men. This party made an attack under the leadership of Nandji, a Congress man. It has also been known on inquiry that Sheo Baran, alias Baohoha, son of Sheo Darshan, resident of mauza Sehna, Chhotai, Brahman of Qaempur, Gayadin of mauza Bais and other persons also took part in the murder and some of these persons have also received gun-shot wounds, which were caused by the gun fire made by Jawwad Mian. There is no trace of several men, out of the companions of Jawwad Mian. Mohammad Jawwad Mian had a few 10 rupee notes, one note-book and one fountain pen, in the pocket of his shirt and those things together with the pocket, have been taken away.

8. It will be seen that according to this report 22 persons are alleged to have taken a prominent part in the riot. Learned Counsel for the appellants has argued that the evidence demonstrates that this report is a false report, that it was not drawn up as is alleged by the prosecution witness Razzaq, but that it was subsequently concocted and that a number of names were included in the report at the instance of Ashfaq, a relation of Jawwad's between whom and Gaya Din, one of the alleged leaders of the mob, there had been a long standing enmity. In support of this contention Learned Counsel has drawn our attention to the fact that Ramhit's name appears in the report although according to the evidence of the witnesses

upon whose information Razzaq says the report was drawn up they did not know Ramhit by name. It appears that these witnesses did state in the Sessions Court that they did not know Ramhit by name before although, in fact, they were able to identify him by face. Ramhit is a son of Gaya Din and Learned Counsel for the defence suggests that his name was inserted at the instance of Ashfaq between whom and Gaya Din there was undoubtedly enmity. Razzaq however states in evidence that Ashfaq did not arrive on the scene until after the report had been handed to the Sub-Inspector Amjad Ali who reached the spot about 2 p.m. Amjad Ali, on the other hand, states in evidence that Ashfaq had already arrived on the scene before he reached the spot and before the report was handed to him. Learned Counsel has also pointed out that the four witnesses who supplied the information for the report are not agreed as to how many of them were present when the report was written by Sugeer Husain. It has further been pointed out by Learned Counsel that the paper on which the report is written was uncreased when produced in Court - a fact which is very suspicious in view of the statement that the paper had been carried in Razzaq's pocket; and moreover that the report was written in two different inks.

9. We have carefully considered all the evidence relating to the drawing up of this report and we are of opinion that it is a genuine document and that it was, in fact, drawn up as Razzaq and Sageer Husain say it was on the spot shortly after the occurrence and on information supplied by Gulzar Khan, Zaheer Khan, Raza Khan, Gulsher Khan and Nabba, son of Dost Mohammad. To begin with the document appears upon the face of it to be a genuine document. It only includes 22 names although, in fact, the mob is proved to have been about a thousand strong. Had the report been drawn up at some later time and at the instigation of Ashfaq and others, in our view it certainly would have included a larger number of names. If there was enmity between Ashfaq and Gaya Din, one would have expected to find the names of those which this enmity prompted Ashfaq to have included, in the report appearing together therein. In fact however Ramhit's name appears in the first list of names and it is only later towards the end of the report that Gayadin's name appears. Futhermore, Gayadin has other sons and nephews whose names are not included in the report.

10. With regard to the fact that the witnesses are not agreed as to who were present when the report was dictated we are of opinion that this rather indicates that the report was not concocted as is suggested by the defence. When one considers the circumstances under which the report was framed and the state of mind of the witnesses who furnished the information, it does not seem at all surprising that upon minor points as for example, as to who actually were present when information was given to Razzaq to enable him to make the report, there should be discrepancies in the evidence of these witnesses. If, on the other hand, the report were a false one deliberately concocted sometime afterwards, in all probability the witnesses would have been in agreement on the point as to who were present when the report was dictated by Razzaq. The same observation applies with equal force to the discrepancies between the statements of Razzaq and the Sub-Inspector as to when Ashfaq arrived upon the scene. It may quite well be in all the circumstances considering the task which faced the Sub-Inspector when he arrived upon the scene that his memory is at fault upon this point. With regard to the point that there were no creases in the paper upon which the report is written we are of opinion after a careful consideration of the evidence that it is not proved that there were no creases in the paper when it was produced. The fact that there were no creases is not noted by the Sessions Judge and although a question on the point was put in cross-examination to Sageer Husain the matter is left very much in doubt upon the evidence. If, in fact, there had been no creases one would have expected that there would have been much more made of it than there appears to have been made in the course of the trial.

11. It is true that the last three lines of the report appear to be written in a different ink from the earlier part of the report. This is however explained by Razzaq who states that the last three lines were added at a later stage after it had been discovered that Jawwad had had money and certain articles in his pocket which had been taken away. The fact that this part of the report is in different ink is, in our opinion, a point in favour of the genuineness of the report. If the report had been concocted as suggested by the prosecution one would not have expected that part of it would be written in one ink and part of it in different ink. On the whole matter therefore after giving due weight to the evidence and to the very able argument presented upon this point by Mr. Malaviya we hold that this report is a

genuine document and that it was drawn up as stated by Eazzaq and Sageer Husain in their evidence in the Sessions Court. Apart from the oral evidence in appearance, in the arrangement of the information and in contents generally it bears the stamp of an honest report.

12. Another important point against a number of the accused is the fact that when arrested they were found to have sustained gun-shot wounds. This fact in our opinion clearly proves that these accused were in the fore-front of the mob as it advanced upon Jawwad's party. Another point upon which the prosecution strongly founded against particular accused is that they absconded immediately after the occurrence. Ordinarily the fact that an accused absconds is not regarded as indicative of his guilt. The present case however, we are of opinion, is somewhat exceptional. Although the mob was about a thousand strong and a very large number of persons must have taken part in the actual attack upon the murdered men, only 8 out of the 72 who were challaned absconded and we consider it a fair inference that in the special circumstances of this case the fact that they did abscond is due to a consciousness of guilt.

13. In support of the Crown case the prosecution evidence adduced a number of eye witnesses. Their evidence has been criticised by Learned Counsel for the defence. It will be noticed, in the first place, that a very large number of accused have been named by certain witnesses, and it was contended that it was impossible for these witnesses to have remembered so many members of the mob. It was further pointed out that a number of the accused were named to the police, but were not identified by witnesses who named them and that a number of them were identified by witnesses who had not named them to the police; and further that some of the witnesses were not examined by the police until some considerable time after the incident.

14. These are criticisms which may fairly be directed against the oral testimony of witnesses in every riot case. It is common experience that witnesses sometimes give to the police names of persons whom they in fact did not actually see in a mob. Further, it often happens that witnesses fail to identify persons whom they have honestly named. In the present case also witnesses may quite honestly have

named persons whom they in fact themselves did not see, but who had been reported to them as taking part in the riot, and this would especially apply to witnesses who were examined by the police after the lapse of some time. Whilst the criticisms which have been advanced by Learned Counsel for the defence are by no means without substance, we are of opinion that they do not justify the rejecting of the oral evidence entirely. We agree however that in this case, as indeed! in all riot cases, the oral evidence must generally be approached with caution and carefully scrutinized, and we have endeavoured to do so in considering these appeals. Learned Counsel for the Crown relied especially upon the evidence of four witnesses, Gulzar, Ikram Husain, Zahir and Nabba son of Nanka. These witnesses were amongst Jawwad's party on the fatal morning. They were all examined by the police very early in the day, and we are of opinion, that they may be classed as good identifying witnesses. There were four identification parades between 21st July 1931 and 12th August. 1931, and these four witnesses, so far as identification by face is concerned, as the Learned Counsel for the Crown has pointed out, do not appear to have made any mistake. Their evidence appears to have been given in the Sessions Court in a clear straightforward manner. We are of opinion, after full consideration of all the facts, that we can place a general reliance upon their testimony. Gulzar especially may be regarded as a reliable witness. The evidence of the other prosecution witnesses is more open to the criticisms directed against them by counsel for the defence already referred to. In their case therefore we have observed special caution in estimating the weight to be attached to their evidence and the amount of corroboration which is necessary from the other evidence in the case.

15. We now proceed to consider the cases of the individual accused. The same witnesses give evidence in many of these cases. They all generally support the testimony of Gulzar upon whose evidence the description of the events of the 7th June, above given is based. It will be convenient to deal with individual cases in the order in which they were presented to us by counsel for the defence. (After considering the evidence on individual cases the judgment concluded.) This concludes the consideration of the cases of the individual accused. Mr. Malaviya in the course of his argument contended that the evidence produced by the Crown shows that at Bhatwaria on 7th June 1931, there were three separate incidents

and not one and he invited us to hold that only those who were proved to have taken part in the actual beating of Jawwad's party should be convicted. He argued that the assembly of the villagers in Bhatwaria on the morning of 7th June 1931, was a perfectly lawful assembly, the object of which was to resist the violent treatment which Jawwad had threatened to his tenants. This, Learned Counsel maintained, was the first assembly. The second assembly consisted of those persons who had been proved to have thrown brickbats and clods at Jawwad's party. Learned Counsel maintained that the members of this assembly should not be convicted under Section 302, Penal Code. The third assembly according to Learned Counsel's contention consisted of those who actually perpetrated the murders and it was only they, he argued, who could be convicted under Section 302, Penal Code. We are unable to accept this contention. It may well be that a perfectly lawful assembly of citizens may become later a riotous mob and it may be that in the mob there will be a number of innocent people who do not share the common object of the rioters. When a person however is found to be amongst a mob of rioters the law presumes that he shares their common object and intention. If he does not share that common object and intention the onus is upon him to prove his innocence. What the common object and intention of a mob is, can only be inferred from its actions. Here a mob murdered certain men. The only inference therefore which can be drawn is that the common object of the mob was murder. If any of the accused did not share that common object it was for them to prove that fact. Their defence however practically in every case has been not that they were amongst the gathering of villagers with an innocent intention, but that they were not there at all. They were bound to rebut the presumption that they shared in the common object of the mob. This they failed to do.

16. We hold therefore that the convictions of those whose appeals have not been allowed must stand. There is no alternative, it follows, open to us, but to confirm the sentences of transportation for life passed by the learned Sessions Judge. The evidence shows it is true, that some of the accused did not play such a prominent part in the riot as others. It may have been that they were carried along with the mob and had no other intention than driving Jawwad and his party away. In the eye of the law however they are guilty of an offence under Section 302/149, Penal Code. It is not in our power to impose a lesser sentence. We feel justified however

on the ground that the evidence is not clear as to what part they actually took in the riot in recommending that the Local Government might consider reducing the sentences of transportation for life in the cases of the following accused : Pahu Lodh, Ramani, Bhagwan Din, Rampati Lohar, Bisheshar Lodh, Ramdhani Lodh, Sukhdeo, Babadin Lodh, Mahabir Pasi, Baijnath Ahir, Sheoambar, Bhagirathi, Drigpal, Pitambar Lodh, Sheodani Ahir and Ram Swaroop. Our task in considering the guilt of these accused has been rendered more difficult by the fact that the Sessions Judge in the main case has not given us the benefit in the course of his judgment of critical analysis of the evidence against each of the accused. His judgment consists mainly of a resume of the evidence of prosecution witnesses. It is the duty of the Judge presiding at the trial to do more than merely collect in his judgment the statements of witnesses who give evidence before him. A careful analysis and appraisal of the evidence is absolutely essential in the interests of justice.

17. Our attention has been drawn by Mr. Malaviya to certain passages in the judgment of the Sessions Judge in the main case in which the learned Sessions Judge animadverted upon Congress activities. There can be little doubt that the riot at Bhatwaria on 7th June 1931, would not have occurred had it not been for the activities of the Congress agents in that district. The learned Sessions Judge was undoubtedly justified in stating so much. His personal views however upon the Congress and Congress activities should not be allowed to obtrude in a judicial pronouncement. It is the duty of a Judge sitting in a Court of justice to avoid all language which may suggest a bias in favour or against any particular class or section of the people. Mr. Malaviya in the course of his argument has also drawn our attention to certain alleged irregularities in the conduct of police investigation. It appears that the diary was not sent in accordance with police regulations to the headquarters every day. No doubt the diary had not been closed and sent to headquarters every 24 hours, but the omission in the present case is not of great importance in view of the fact that on 8th June 1931, the investigation was taken over by the Deputy Superintendent of Police himself. Learned Counsel has also criticised the Sub-Inspector, Amjad Ali, on the ground that he did not take statements of more than two witnesses on 7th June 1931. We are not surprised at this however. When the Sub-Inspector arrived on the scene he undoubtedly had

his hands full. He had to prepare inquest reports in connection with 6 or 7 dead bodies and to arrange for the bodies being forwarded for post mortem examination. We have not the slightest doubt that his time was fully occupied until late in the night. In the result we uphold the convictions and sentences of Adhin, Adhar,. Babadin son of Somodhi Lodh, Baijnath, Bhagirathi, Bishesar, Drigpal Mahabir, son of Sital Pasi, Narain, Nathu Pitambar, Raghubir, Ramdhani, Sheodani, son of Surju Ahir, Sallahi, Sheoambar, Sukhdeo, son of Gayadin Lodh, Sardar, Pahu, Babadin, son of Jawahir Ahir, Bhagwandin, Ramai, Bansdhari, Babadin, son of Rambharos Lohar, Rammanohar, Jeorakhan, Nandkumar Singh, alias Nandji, Pran, Ram Bhajan, Ramhit, Sabsukh, Surajdin, Sheodani, son of Surju Brahman, Ram Swaroop Gopal Pasi and Ram Pati Lohar.

18. We allow the appeals of Pachohu, Babu Lal, Surajpal Lakhan Singh, Saman Singh Matru Singh, Ram Autar, Mahabir, son of Ram Kishun Ahir, Kuber Singh, Aman Singh set aside their convictions and sentences and direct that they be set at liberty forthwith provided they are not required in connexion with any other case. In the case of sixteen appellants already named we have recommended a reduction of sentence. We wish in conclusion to express our high appreciation of the assistance we have received in the consideration of these appeals of Mr. Majid Ali. He presented the case for the Crown with exemplary moderation and brevity and his argument evidenced not only ability, but thorough and diligent preparation. The chart which he prepared in which the evidence against each accused is tabulated and analysed has been of the greatest assistance.

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