

Laijam Singh Vs. Emperor

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Court : Allahabad

Decided On : Nov-24-1924

Reported in : AIR1925All405

Appellant : Laijam Singh

Respondent : Emperor

Judgement :

Walsh, J.

1. This is an appeal by one Laijam Singh against a conviction for dacoity, which, if true, discloses a bad case, inasmuch as he was apparently one of the ring-leaders in a dacoity in which something like 15 men are alleged to have taken part, in which a considerable amount of loot was obtained, and in which one prominent man was possessed of a gun. Three out of the 4 assessors thought the case was proved, but in a case of this kind they are not unlikely to be influenced by the view of the learned Judge who was satisfied with the evidence. Together with the appeal, an application in revision has been filed by the Government Advocate raising the question of the section under which the conviction was passed, and of the comparatively light sentence having regard to the fact that the accused was armed with a gun which he fired during the dacoity if his guilt is established. It is possible that the learned Judge was inclined to take a lenient course because, as he expressed it, it was a pity that a pensioned havildar licensed to carry arms,

should have gone out of his way to rob people in this way, and it is just possible that the learned Judge was also influenced by the difficulty of the case. But; it cannot be denied that the view taken by the Government Advocate in submitting revision is a sound one, and that if the accused was guilty, he was guilty of a serious crime against the public peace.

2. The case was an extremely difficult one as is indicated by the length of the learned Judge's judgment, in which he felt compelled to discuss various matters which in our view do not really strengthen the case against the accused. The case against the accused, when the matter is clearly understood, is reduced to a small compass, and although he has not been represented by a trained lawyer in the appeal before us, he has submitted a petition of appeal quite contrary to the ordinary jail petitions to which one has become accustomed, in which he raises on his own behalf at least two if not more points, which are calculated, when one compares them with the evidence, to raise a doubt in one's mind.

3. The story of the dacoity is a little out of the common. It took place at a village about 40 miles from the village of the accused. The owner of the house Jawahir was absent from home. He had a brother named Putti Lal and he had recently purchased a horse and was in possession of the receipt which had been made out to him on a piece of white paper. He does not say where the receipt was kept and when he saw it last, and curiously enough nobody was struck at the trial by the obvious question where the receipt was eventually found, if at all, after the dacoity. On the night of the 6th of January during Jawahir's absence while members of his family were in the house, a man came in and asked for fire and was allowed to sit down and to have it, and at some later stage he was joined by four other men who were also allowed to sit down and have the fire, and it therefore happened that the inmates of the house found themselves sitting over the fire with five complete strangers who were making preparation to commit this dacoity. As regards these five, they must have had ample opportunity of identifying them if they ever saw them again. Shortly afterwards other men arrived upon the scene and proceeded to ransack the house. They were protected, if not led, by a man who stalked up and down outside carrying a gun, and who was said at the trial to be wearing a beard. As the accused also wears a beard, this fact becomes an important item in

the evidence against him. But it so happens that according to the diary, which it had become in this case important to examine with care, nobody told the police, although they did say they could identify the men, that there was one dacoit stalking about with a gun wearing a beard. It is, therefore, doubtful whether the beard connecting the man with the gun is not an after-thought. The dacoity took about an hour, and the man with the gun eventually warned the gang that they were being pressed and had better be off, and away they went, and except for the accused have never been seen so as to be recognized again. The first question which arises is whether it can be said without doubt that the prosecution has proved satisfactorily that the accused was the man with the gun. The accused does in fact carry a gun under a licence.

4. Continuing in chronological order, the other important point against the accused is this. Two witnesses, Putti Lal the brother of Jawahir, and Bhajan say that the next morning they picked up outside the door, just at the spot where the accused was stalking about with a gun, a letter in an envelope, and a witness summons to attend at the hearing of a case, which were undoubtedly the property of the accused, and which should have been in his possession at the time of the dacoity. The fact is in itself only a piece of circumstantial evidence that they were dropped by him when he was stalking about with a gun. It is important to bear in mind that this is only a matter of inference, because it is natural to wonder if the dacoit, who was stalking about with a gun so as to be clearly recognizable, did drop the documents belonging to him, he was not seen to drop them at the time. At any rate if he left two important documents, such as a stamped post office letter and a badami paper summons bearing the well-known, almost majestic indication of an official document, on the ground where it would be easy to see them, one would have thought that they would have been immediately discovered in the general hue and cry after the dacoits had gone and all personal risk was at an end. The case, therefore, stands against the accused in this way : that he being a licensed gun-holder and a pensioned havildar, being fired with the spirit of adventure and greed joined, an unknown band of dacoits who came-from no one knows where, and between whom and the accused the prosecution have been unable to establish any previous-connection ; that he travelled 40 miles to this village with a gun returning to his own village with the gun, and took with him on this dangerous

adventure a postal letter and a legal summons, which would be certain to lead to his identification if he happened to have an accident, and that, although they had travelled on his person. safely for 40 miles, they happened to drop at the very place where he was committing this crime, when so far as the evidence : shows, no personal struggle between him and anybody else, which might have led to the disarrangement of his clothing and the loss of these documents took place. One can only say that the crime itself strikes one as *prima facie* improbable in the way in which it is alleged to have been committed by this man, and that the evidence by which it is made out is far from strong. When that evidence turns out to be considerably shaken in strength as the result of a close scrutiny of it, the case becomes not merely not strong, but so weak as to be-one which no Court ought to accept.

5. First, therefore, as regards the identification, we have said that the dacoit with the gun was wearing a beard. The accused himself wore a beard, and, perhaps not unnaturally, thinking that that might be an important weapon against him if anybody should want as he believed at the time somebody did want- him to be falsely identified for the crime requested the Magistrate to cover his board and to cover the beards of any others who were put up with him for identification. The Magistrate no doubt from excellent motives yielded to this request. We are bound to point out that the decision was a mistake. In such a case it is easy to be wise after the event, but it is always possible for a Magistrate to arrange for two identifications. A man who wears a beard, even if he is falsely charged, cannot help it if the witnesses are satisfied that one of the dacoits also wore a beard. It is a piece of misfortune no doubt, but it is only one of the elements which have to be taken into account in deciding identifications. Beards differ like noses or the mouths which they cover, and in an honest case it does not in the least follow, if a suspected parson is put up with several other persons also wearing beards, that he will be identified unless he was really there, and in order to test an honest case and in the interests of the investigation of crime, a Magistrate should insist, if the accused has a beard and whether or not a witness has already described a man as wearing a beard, that the accused should be put up with others of similar appearance, if possible, as he is, and not as a different parson. If the Magistrate thinks it fair to the accused to yield to his request, he can at another identification

cover up all the beards including the accused's, and try the witnesses in that way also. That method, however, is just as unfair to the witnesses as the proper presentation of the accused appears to be to the accused himself. But it is no good crying over spilt milk as the saying goes. We have to deal with facts as they are proved at the trial, and in this case it is undoubtedly proved that, whereas the identifying witness in jail, Ram Sahai, says at the trial that he was able to identify the man stalking with the gun as the man who wore a beard, he undoubtedly identified somebody who for the moment had no beard. How he was able to do it, is mysterious. One can only say that an identification made of a man who is said to have been wearing a beard at the time, and whose beard is concealed or absent at the time of identification, is by no means convincing, and when it stands alone, must be regarded as an unstable piece of evidence. The learned Judge, after promising to discuss the identification at the proper place, did not completely do so, and he has failed to appreciate this difficulty. The only other attempt at identification is quite worthless. Putti Lal the other witness, who was relied upon by the prosecution and by the Judge as having identified the accused, failed to do so in jail when the accused's beard was covered up, and this is not to be wondered at. He identified the accused in Court, but as he had already said that the man he saw wore a beard, and as the accused was the only man, in the dock, and was also wearing a beard, this was quite easy and not convincing. We, therefore, feel bound to say that so far as the identification was concerned, the case breaks down. We are inclined to think that if the Judge had taken this view, he would have given, the accused the benefit of the doubt.

6. We now turn to the question of these compromising documents the evidence about which is even more difficult. We are by no means satisfied that the whole truth about their discovery has been disclosed. The learned Judge has devoted a very exhaustive investigation to the question whether these documents were brought home to the accused. By an error of judgment at the trial, the defence insisted on fighting this point. We think it fair to the accused to say that we doubt whether he approved of this course being taken. At any rate the case must be examined upon the assumption that the documents are proved to be his, and it is fair to him to say that without any attempt at changing his ground, or in any way fencing with the case against him he discussed the matter in his petition as though

they were his. There are reasons, we cannot say more, for distrusting to some extent the evidence of Jawahir and his friends, so far as it bears upon the case. The accused makes a great point in his petition of appeal that his enemy Gangu is responsible for this charge. It is not necessary to prove it. The learned Judge has given reasons why he was unable to accept the defence set up on this point. But there are certain admitted facts which no Court ought to ignore. Gangu is related to Jawahir on the maternal side. He is at enmity with the accused, and although he, like the accused, lives some 40 miles from the place of the dacoity, he was present throughout the trial and undoubtedly interested himself conspicuously in the prosecution of the case, and in spite of this Jawahir said on oath that he did not know him. We can only say that these admitted facts produce an uncomfortable feeling that there may be something in what the accused states. The history of the documents, from the time they were found until the time they became a weapon in the hands of the police, is open to grave suspicion. Working backwards the case stands thus. Bishambhar Singh the Sub-Inspector, who came upon the spot as a kind of interregnum between Salamat Ali the Head Constable who first took up the investigation, and the Sub-Inspector belonging to the proper thana, knew nothing about these documents until the morning of the 9th. Salamat Ali, who changed his evidence on this point at least once, is positive that he handed them, or showed them to Bishambhar Singh on the night of the 8th. The learned Judge has chosen to believe Salamat Ali. But it does turn out that the diary tends to confirm Bishambhar Singh, because the first official mention of these documents is the entry in the diary on the morning of the 9th, and one is bound to say that whether one has a preference for the evidence of one or the other of these two police officials, the result is to leave the question of the first official possession by the police of these documents in the dark. But whether they reached Salamat Ali on the evening of the 8th or on the morning of the 9th, there is a long unexplained gap between their alleged discovery and their custody by the police. In a story so strange one would like to be fully convinced that these documents can be trusted to be the documents which were picked up from the ground on the morning of the 7th. If they are, the absence of any mention of them in the diary before the 9th is a matter for unfavourable comment. But the difficulties do not stop there. The two men who found them, Putti Lal and Bhajan, have told

their story, and they agree in saying that they handed them to Jawahir, who in his turn handed them to Salamat Ali. Bishambhar Singh on the other hand makes the significant statement that when they were handed over to him by Salamat Ali, Salamat Ali told him that Bhajan had given them to him. If this is true, the evidence at the trial about the way in which they were handed to Salamat Ali is untrue. If it is untrue, Salamat Ali has been contradicting himself in a way which makes it difficult to rely upon his evidence. This point has been entirely overlooked by the Judge. Further the prosecution must have felt uncomfortable about the treatment of these documents when they were first picked up. When they were first picked up, presumably amongst the refuse remaining from the dacoity, they obviously attracted no particular attention according to the two witnesses who found them, and were put away in a niche in the house. The explanation of the treatment of them can only be described as somewhat feeble and far-fetched.

7. It is true that the witnesses are illiterate. Upon the assumption that the accused is guilty, it is just possible that they attributed no importance to their discovery. But we find it difficult to believe, what they are so anxious to convince the Court about, namely, that two illiterate witnesses, who presumably had some conversation about the matter, should both agree, in thinking that a badami summons was a receipt for a horse which was certainly known by them to be white, if they had previously seen it; that they should happen to make the same mistake, and while thinking it necessary to explain away the indifference with which they treated the summons, should offer no explanation of their treatment of the letter. To sum up this second head of evidence, assuming that these documents belonged to the accused, we are not satisfied that they were dropped on the ground during the dacoity and found the next morning. The result is that we are in doubt about both points upon which the prosecution rely, points unfortunately the significance of which the learned Judge has rather overlooked in the very full consideration which he has given to other matters in the case, and which do not seem to us to be worth further discussion, with one exception.

8. A letter which the learned Judge is satisfied was written by a relation of the accused referring to an attempt to raise money to buy off the prosecution, and assuming the guilt of the accused, rather than stating any positive reasons for

thinking him guilty, has been much discussed in the judgment and improperly used by the prosecution. We hope we are not doing the learned Judge an injustice when we say that in regard to this document he failed to make up his mind, as a Judge should do. At one portion of his judgment he says that the statements in them cannot be used as evidence against the accused, because, they might be no more than hearsay, so far as they connected him with the dacoity. We are not sure whether he used them or whether he did not. It is very dangerous to discuss at elaborate length, not merely the nature of proof of documents, but also their contents from the point of view of the use which is being made of them by the person who tenders them in evidence, namely, the prosecution, and at the same time to say that they cannot be used as evidence. We are afraid that the learned Judge in the ordinary course of human nature must have been influenced adversely to the accused by these documents. We will merely point out the legal aspect bearing upon them, and what we think the proper course for the Court when such documents are tendered in evidence. Matters tendered in evidence by the prosecution affecting a case, must be dealt with summarily and instantly by the Judge at the trial when they are tendered, These documents ought to have been at once rejected by the Judge as inadmissible and the Government pleader rebuked for attempting to get them in for the following reasons:

Assuming that they were proved to have been written by one of the witnesses who was called, with the authority of a relation of the accused, they were written after the crime, and could never be used in any sense, except as an admission by the accused himself, and before the Judge allowed himself to look at them, or to receive any evidence relating to them, he ought to have called upon the Government pleader to prove, if he could, that they were written with the knowledge and direct authority of the accused. If ha had stopped to consider it for one moment, it was impossible to prove anything of the kind. They were written when the accused was in the custody of the police after he had been arrested. This is no hypercriticism. It is clear law, as the Judge ought to have realised if ha had given himself time, and while on the one hand one has the advantage in a Court of appeal in the case of an experienced Judge like this of knowing his reasons for his ultimate conclusion, on the other hand Judges, in a Court of appeal, are apt sometimes to attach weight to the opinion of the assessors, and

although their opinion does not have any legal effect, the Judge ought to guard very carefully against allowing a discussion in Court, or the reading of a document in Court in the presence of the assessors injurious to the accused, when it is by law inadmissible. No great harm has been done in this case except that the matter has caused us additional trouble. But it is desirable to impress upon Criminal Courts that the benefit of a reasonable doubt ought to be given from the Bench, even to the admission of the evidence, particularly documentary evidence, during the trial, and where the Judge is unable to make up his mind about admissibility, the proper course for him is, either to direct the prosecution to keep back the documents until he has an opportunity of looking into the law, or to reject them altogether. No Judge in a doubtful case of admissibility ought to allow the evidence first to be given, and then in his judgment give a decision about their admissibility. Doubtful or inadmissible documents ought not to be admitted in criminal trials. In this case there was no doubt and it would have been better if these documents had been rejected when they were first offered in evidence. For these reasons we give effect to the appeal, acquit the accused, and direct him to be discharged. Under the circumstances the very natural application by the Government falls to the ground.