

Sanuman and ors. Vs. Emperor

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Court : Allahabad

Decided On : Feb-21-1921

Reported in : AIR1921All19; 63Ind.Cas.401

Judge : Stuart, J.

Appellant : Sanuman and ors.

Respondent : Emperor

Judgement :

Stuart, J.

1. This is an appeal by 28 persons against convictions and sentences by the learned Sessions Judge of Gorakhpur. The facts are as follows:

On the 4th of March 1920 two Inspector in the Excise Department in Gorakhpur, Babu Baleshwar Prasad and Babu Murli Dhar, went out on ekkas to search certain houses in a village a few miles from Gorakhpur, having received information that illicit liquor was being distilled. For excise peons followed them on foot; after an interval there same on foot another excise peon and four constbles. The party collected at a village called Gularia at about 2 p.m. Thence they went to the village Khutahan, where the search was to be made. They reached Khutahan about 3 P.M. In Khutahan they searched the houses of Sarju Kewat, Bisheshar Kewat, Mahabir Kewat, Manohar Kewat, Musammat Sonkali Kewat and Jagarnath Kewat,

As far as I have been able to ascertain, Khutahan is a village in a forest tract or ex-forest tract in which the cultivators are almost entirely Kewats. Kewat cultivators in such a village have a low standard of intelligence, and are usually ignorant and excitable people. The day on which the search was made was shortly before the Holi festival. Kewats are a drinking caste and would ordinarily consider the Holi festival not properly performed if the festivities did not include drinking alcohol. The search resulted in the discovery of something under six bottles of illicit liquor and a few of the rough utensils that are used by villagers for the distillation of illicit liquor. It would seem obvious from the fact that very little liquor was found and that the implements for distilling were most primitive, that the villagers were distilling illicit liquor not to sell it but to drink it themselves, probably at the Holi. All the articles discovered were put in charge of Murli Dhar, Inspector Jagarnath, Manohar and Musammat Sonkali were apprehended. Baleshmar Prasad obtained a cart. The articles captured were placed on the cart. The party, consisting of two Inspectors, five Chaparasis and four constables, were on the point of leaving Khutahan with their three prisoners and the cart, between 6 p.M. and 7 p.m., when a fire broke out in the cattle-shed of Jagarnath the man who had been arrested. The villagers collected. Murli Dhar and some of his party assisted the villagers in patting out the fire. The fire was not serious; it did not spread and was soon extinguished. By this time over 200 villagers had collected on the spot. The fire having been extinguished, the party moved on with their prisoners and the cart. They had not gone 50 yards when a woman, who has not been identified, called out: 'is this village without a Zemindar that these persons rob the village and set fire to it?' Villagers then collected from all sides and attacked the Excise Inspectors and their party. With the exception of the Excise Inspectors every one else ran away. The prisoners were left by themselves and subsequently made good their escape. The two inspectors were rather severely handled. According to the medical evidence they each received grievous hurt, but their injuries were not of a dangerous nature. They were soundly thrashed with lathis and underwent a most unpleasant experience, but their lives were never in any danger, and on the whole, they were fortunate in getting off as lightly as they did, considering the fact that they were amongst a crowd of ignorant and excited villagers who were suffering from what appeared to them to be a real grievance, though it was not a grievance which the

law can recognise. It seems to me palpable that the villagers were intensely alarmed at the arrest of Musammat Sonkali. They were undoubtedly extremely annoyed at the raid. They had not lost much in the way of illicit liquor, only some six bottles, but they were probably apprehensive that further searches would be made in the village. It is extremely probable that there were more illicit stills than the stills which the Excise Officers had discovered. The main causes for the violent action of the villagers were, however, almost certainly the arrest of the woman and the arrant of the two men. The Excise Officers undoubtedly had the right to make a search and the right to arrest these persons, but whether they showed discretion in their action is another question. In the course of the attack Baleshwar Prasad says, he was robbed of a gold ring. After attacking the two Excise Inspectors the villagers took them prisoners, Behari Singh Zemindar of the adjoining village of Phulwaria, came up and remonstrated with the crowd. By this time the five Excise peons and the four constables had come back. Some of them had received some injuries in the fight. The crowd took the two Inspectors to the Zemindar's chhaoni in Khutahan, saying that they were dacoits. Neither the Zemindar nor any of his servants were there. Behari Singh besought the crowd to let the Excise Officers go, saying that he would stand security for their appearance. The Inspectors were then released and went back from the chhaoni with the peons and constables to Phulwaria and thence to Gorakhpur, which they reached at 2 A.M.

2. The fight had taken place in bright moonlight. Thirty-five persons were committed for trial on charges under Sections 395 and 332, Indian Penal Code. The learned Sessions Judge on receiving the case proceeded to increase and amplify these charges. In the end he had framed nine charges in all, as is shown by the charge-sheets. From his judgment he had framed ten. The tenth charge was under Section 392 against Birbal for taking Inspector Baleshwar Prasad's gold ring, I have been unable to find this charge. The learned Sessions Judge arrived at no finding upon it. In the end he convicted twenty-eight persons who are the persons now appealing before me. Leaving but persons who were acquitted, I shall consider the charges brought against the 28 appellants. All were charged under Section 395, Indian Penal Code. The most impressive charge was thus one of dacoity, The learned Counsel for the appellants does not question the propriety of this charge on the facts. The dacoity was, however, of the most technical

character. The charge amounts to this: The villagers wanted to get the illicit liquor and the other articles captured back. They formed in force to effect this purpose. The recovery of the articles being a technical theft and, violence having been used, a technical robbery arose committed by more than five persons, hence there was a charge of dacoity. The charge of dacoity in itself is a good charge. I think it necessary, however, to emphasize the fact that the dacoity was absolutely technical. I wish to safeguard these appellants whose convictions have been upheld from entries in the badmashi register as ex dacoits. They are not ex-dacoits in the ordinary sense of the word. At the present moment there are a large number of real dacoities being committed in this Province, and it is most desirable that real dacoits should be distinguished from technical dacoits in the minds of the Police authorities. The next two charges which were framed against all these persons were under Sections 333 and 332, Indian Penal Code. Then followed a charge under Section 225 against all the accused, with the exception of Jagarnath, Manohar and Musammat Sonkalia, of having rescued these three persons and a charge under Section 224 against these three persons for having escaped from lawful custody. There then followed a charge under Section 342 against 18 of the accused for having illegally confined the Excise Inspectors, and against the Zemindar under Section 342/149 for being responsible for the said illegal confinement. Against four of the accused there was a further charge under Section 436/193 of having set fire to the cow shed with the intention of fabricating false evidence against the Excise Inspectors and their party. I wish to do full justice to the trouble which the learned Sessions Judge has expended in trying the case and the great care with which he has treated every detail, but I do not consider that any useful purpose was served by this multiplication of charges. To all intents and purposes the case against these accused persons was a very simple one. They had attacked the Excise party and beaten them severely. That was the main charge and the only important charge. Everything else was immaterial. The learned Sessions Judge recognized this fact when he directed all the sentences to run concurrently. When the sentences are examined, it will be seen that with one exception every person has been convicted under Section 333 and that the heaviest sentences have been passed under that Section. All the other sentences run concurrently, except in the case of the person who was not convicted under

that section. Apart from the provisions of the present Code of Criminal Procedure on the subject of joinder of charges and joint trial of persons, there are general principles of universal application with regard to trials. These principles were well laid down by a Bench of the Bombay High Court in *Queen-Empress v. Fakirappa* 15 B. 491 : 8 Ind. Dec. (N.S.) 333. The head-note indicates them sufficiently. It is as follows:

if, in any case, either the accused are likely to be bewildered in their defence by having to meet many disconnected charges, or the prospect of a fair trial is likely to be endangered by the production of a mass of evidence directed to many different matters and tending by its mere accumulation to induce an undue suspicion against the accused, then the propriety of combining the charges may well be questioned.

3. This decision was under the old Code. The principles, however, are equally good under any Code. I do not go so far as to say that in the present case the accused were actually bewildered in their defence by having to meet many disconnected charges, or that a fair trial was not obtained, but I think that the learned Sessions Judge incurred a distinct danger of spoiling the prospects of a fair trial owing to his desire that every single aspect of the case should be brought out in the charge-sheet and I recommend him in future not to take a similar risk. Nothing could be gained by the Procedure and a very great deal could have been lost by it. The learned Counsel for the appellants has attacked the trial as illegal. His case is that neither under the provisions of Section 234 or 235 or 239 of the Code of Criminal Procedure is the trial justified. In order to decide this plea, it is necessary for me to recapitulate the facts, which form the basis of the charges against the accused persons. The allegations of the prosecution, as accepted by the Committing Magistrate, were as follows: It was stated that certain Excise Officers, having made a seizure of articles which it was alleged were being used for the purpose of illicit distillation, and apprehended certain persons as being in possession of these articles, were taking the articles and escorting these persons from the village where the articles had been found to the head-quarters of the Excise Department. It was alleged that while they were so doing, a large number of adherents of the apprehended persons collected and that the following events

followed:

(1) A cow-shed was set on fire. The suggestion here was that the Excise Officers might be charged with having committed mischief by fire.

(2) The Excise Officers were beaten severely and otherwise maltreated.

(3) The articles seized were recovered.

(4) The prisoners were rescued,

(5) Some of the Excise Officers were wrongfully confined.

4. These were the allegations of the prosecution which were accepted as being established prima facie on the order of the Committing Magistrate, and these allegations formed the basis of the charges. It appears that the trial will be justified upon the charges as framed by the learned Sessions Judge, if the events which I have already enumerated formed one transaction. If these events do not form one transaction, the trial is bad in law and the proceedings must be set aside. The rule as sanctioned in Section 233 is that for every distinct offense of which a person is accused there shall be a separate charge and every such charge shall be tried separately. But this rule is subject to the exceptions provided specifically in Sections 234, 235, 236 and 239. Section 234 has no application here. This is not a case of offenses of the same kind. If it had application the trial would be clearly bad, because more than three offences have been charged together. The question arises, whether Section 235 read with Section 239 justifies the action taken. Section 238 has no application. If in a series of acts so connected together as to form the same transaction more offenses than one are committed by the same person, he may be charged with and tried at one trial for every such offense under Section 235 and when more persons than one are accused of the same offence or of different offenses committed in the same transaction, they may be charged together under the provisions of Section 239.

5. The learned Counsel for the appellants urges that in no circumstances can more than three offenses be combined even if more than three offenses have been Committed in the same transaction. He has been unable to find any decision

in support of his argument. There is one decision directly against it. That decision is contained in a reported judgment of a Bench of the Calcutta High Court, Emperor v. Sri Narain Prasad 11 C.W.N. 715 : 5 Cr. L.J. 484. There four offenses were combined in one trial. It should, however, be pointed out that the point taken by the learned Counsel for the appellants does not seem to have been considered by that Bench, and in view of that circumstance I do not consider that the decision in question affords much assistance in deciding this matter. The main point against the learned Counsel's argument is that there is nothing in the words of Section 235 or 239 to support the limitation which he advances, It is true that in the illustrations to the sections no more than three offences are ever specifically mentioned. In the Illustration to Section 235(d), however, the number of offences is not stated and could be more than three. But in any circumstance I find that the plea (which is an ingenious plea) cannot be supported. If it were advanced, for example in a case of gang murder in which four people had been murdered, it would on the face of it appear to be without weight. I find against it. This carries me back to the main point. Do the events which I have already described form part of one transaction? There has been no attempt in the Code to define the meaning of the word 'transaction' and it would be almost impossible to frame a satisfactory definition. In a certain decision of the Bombay High Court some very valuable remarks were made as to the Rules which should guide a Court in deciding whether a particular series of events do or do not form one transaction. This decision is in Emperor v. Sherufalli Allibhoy 27 B. 135 : 4 Bom. L.R. 930. At page 138, Chandavarkar, J., says: 'The real and substantial test, then, for determining whether several offenses are connected together so as to form the same transaction, depends upon whether they are so related to one another in point of purpose or as cause and effect, or as principal and subsidiary acts, as to constitute one continuous action, A mere interval of time between the commission of one offence and another does not by itself necessarily import want of continuity, though the length of the interval may be an important element in determining the question of connection between the two.'

6. I proceed to apply these principles to the facts as alleged by the prosecution. There can be no objection with regard to the interval of time for here one event followed directly after another, and the period from the first event to the last was

less than five hours. There was a common purpose running through all the offences. The villagers were actuated by a desire to save their friends?, intimidate and punish the Excise Officials, and to cover up their own tracks. Keeping this common purpose in mind, it will be seen that each act followed the act preceding it, as a consequence. To intimidate the Excise Officers a cow-shed was set on fire. This act was likely to cause apprehensions of a false charge and if the apprehensions were sufficiently strong the Excise Officers might go away, leave the cart and leave the prisoners, and cease to take further action against the village. They did not do so. Then they were attacked. Finally they were taken into custody. In order to establish a transaction it is necessary to have a chain. Each event must be a link in the chain. There must be no rupture in the sequence. There must be no hiatus. But here each event is a link connected with the preceding event. There is only one chain, there is no rupture and there is no status. I, therefore, hold that all these events formed one transaction and that in these circumstances the trial is good.

7. I now proceed to the evidence. The general story told by the prosecution is established as true, with the exception of the incident of the theft of the gold ring. In such scuffle it would be very easy for a ring to drop off. I do not suggest that the Inspector Baleshwar Prasad has added to his story or stated anything that he did not believe to be true but as the action of the villagers, though violent, was not in any way dishonest (except in the most technical sense of the word), I find it rather difficult to believe that in the scuffle one of them would have committed the theft of a ring. It is much more likely that the ring fell off and that the Excise Inspector honestly believed that the man with whom he was struggling at the time had taken it. However, with that exception the general facts are established. The cow-shed was set on fire, the Excise party were attacked and the two Inspectors were taken into wrongful confinement.

8. Next it is to be considered against which individual appellants these offences have been brought home. Although the most elaborate arrangements were made for the identification of individuals, I have a real and substantial doubt, to which I must give effect, as to whether the Excise Inspectors or any other of the witnesses could really have identified all the people whom they professed to identify. Granted

that it was a moonlight night and that the events were likely to remain in their memories, it seems very difficult to believe that after such a scuffle witness should have been able to identify with certainty as many persons as Inspector Baleshwar Prasad states he identified. I have examined this question of identification closely and propose only to uphold convictions against persons who, in my opinion, have been identified unmistakably. From the facts it would appear that practically all the villagers present took part in this riot. A large number of villagers, however, must necessarily not have been present, being away at their fields or engaged elsewhere. It cannot be accepted as a reason for convicting any individual man that he is a resident of the village, and it is necessary to fix down very closely even after the identification what particular part each person is proved to have taken in the riot. The persons who actually attacked the Inspectors and beat them severely must expend a reasonably severe punishment, Persons on the other hand who stood on the outskirts and did little more than shout and wave a lathi or a stick do not deserve a severe punishment. I have been taken through the evidence carefully by the learned Counsel for the appellants, and at the end I find that Guddi, Pabbar and Lachman took a leading part in the attack upon the two Excise Inspectors. Bhajan and Sarju took a less leading part in the attack upon the Inspectors. Sanuman, Kewal, Tulai and Kumar were present and participated. Kewal and Kumar are, however, mere lads and Sanuman and Tulai did very little. I find that the evidence is not sufficient against the remainder. I, therefore, allow the appeals of Mohan, Jagan, Purai, Bhagwat, Jangli, Pheru, Ramkishen, Kodai, Mendhai, Bisheshar, Narain, Jagarnath, Padarath, Manohar, Sukhari, Shcombar and Sukhai. It is not correct to say that all these persons were not identified as having been present. It would have been more accurate had I stated that some of them were not sufficiently identified as being present and that the others who were identified as being present (it is perfectly clear that Jagarnath and Manohar Were present for they were two of the men arrested) are not proved to have taken any real part in the affair.

9. These appeals are allowed and the men in question will be at once released.

10. With regard to the remainder, Sanuman has been convicted merely of a very technical wrongful confinement. He has already been punished sufficiently by the

period of imprisonment which he has undergone. I direct him to be released.

11. Kewal is a mere boy. I reduce his sentence on all charges to the sentence of imprisonment which he has already undergone under Sections 395, 333 and 332 and allow his appeal under Section 225, as I do not find that there was any rescue, the prisoners having walked away. He will be released.

12. I reduce Bhajan's sentence under Sections 395, 333 and 332 to one year and allow his appeal under Section 225 for I do not find that there was any rescue.

13. In the case of Sarju I reduce his sentence under Sections 395, 333 and 332 to one year and allow his appeal under Section 225.

14. In the case of Tulai I reduce his sentence under Sections 395, 333 and 332 to the sentence of imprisonment which he has already undergone and allow his appeal under Section 225.

15. In the case of Guddi I reduce his sentence under Sections 395 and 333 to two years. I uphold his conviction and sentence under Sections 332 and 342 of one year. This sentence will run concurrently with the two years' sentence. I allow his appeal under Section 225.

16. In the case of Kumar I reduce his sentence under Sections 395, 333, 332 and 342 to the period of imprisonment he has already undergone and allow his appeal under Section 225.

17. In the case of Birbal who did not take the ring and took a very trifling part in the riot, I reduce his sentences under Sections 395, 333, 332 and 342 to the term of imprisonment he has already undergone and allow his appeal under Section 225.

18. In the case of Pabbar I uphold the sentence of two years under Section 395, reduce the sentence under Section 333 to two years, uphold the sentence of one year under Section 232 and allow his appeal under Section 225. The sentence of one year will run concurrently with the two others.

19. In the case of Lachman I uphold his sentence of two years under Section 295, reduce his sentence under Section 333 to two years, uphold the sentences of one

year under Sections 332 and 342, directing them to run concurrently with the sentence of two years and allow his appeal under Section 225.

20. The net result will be as follows:

Sanuman, Kewal, Tulai, Kumar and Birbal will be at once released.

Guddi, Pabbar and Lachman will serve two years' rigorous imprisonment in all each.

Bhajan and Sarju will serve one year each.

21. I have reduced the sentences considerably. These are the reasons why I have done so: I realise that the Excise Officials require protection, but it is not necessary in order to give them that protection to pass drastic sentences against these villagers. The sentences which I have passed are in my opinion sufficiently deterrent to afford a hope that there will be no repetition of such an incident. At the same time I have to consider the point of view of these villagers. They are, as I take it, childish, ignorant, irresponsible people. They behaved with some brutality, but with a certain amount of self-restraint considering their temperaments. They behaved on the whole not like men but like hysterical children. I have endeavoured to protect Excise Officers from future attacks of such hysterical children, but I do not lose sight of the character and the temperament of the people who have to serve the sentences. I have one word to add. I have left out the case of Mahesh for the following reasons: Mahesh was sentenced to ten stripes. These stripes have already been inflicted. No appeal lay and the name was evidently included in the petition of appeal by error. The Counsel for the appellants did not press his appeal. Strictly speaking, I should leave the case of Mahesh as it is, but as on the merits I do not find that he took any part in the riot it seems hard that this boy should have against him a conviction for dacoity even although it is technical dacoity. It is not worth the trouble of opening no separate proceedings in revision but, with the consent and the approval of the learned Government Pleader I direct now that that conviction and sentence be set aside. He has already been flogged, but it will be some satisfaction to him that he will not be regarded as an ex-dacoit.

