

Emperor Vs. Sardara and ors.

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Court : Allahabad

Decided On : Dec-14-1923

Reported in : (1924)ILR46All236

Judge : Piggott, ;Lindsay and ;Sulaiman, JJ.

Appellant : Emperor

Respondent : Sardara and ors.

Judgement :

Piggott, Lindsay and Sulaiman, JJ.

1. In this case Sardara, Bansi and Pokha, described as pasis by caste, residents of the same village, mauza Meoli, in the Rampur State, were put on their trial on a charge framed under Section 396 of the Indian Penal Code in respect of a dacoity committed on the 27th of June, 1922, at a village called Majhaura, in the Bahjoi police circle of the Moradabad district. The learned Sessions Judge has convicted all three accused and the record is before us for confirmation of the sentence of death passed by the sessions court. The accused have submitted petitions of appeal and the case has been argued by counsel on their behalf. The commission of a serious dacoity on the date and at the place specified in the charge is proved by abundant evidence and is not contested. The villagers seem to have expected succour from a fort belonging to a local Eaja and as the dacoits who were somewhere about thirty in number, were leaving the house which they had

plundered, they found it necessary to fire on the assembled villagers in order to clear a passage for themselves. The evidence is that either two, or three, shots were fired, that two villagers were killed on the spot and others wounded. It will be convenient to consider at once the circumstances under which the three appellants came to be implicated. More than a month later, that is to say, on the 30th of July, 1922, the police in the Etah district arrested, under circumstances of grave suspicion, certain persons who were endeavouring to travel by train from the railway station of Kasganj or other railway stations on the same line in that district. Amongst the persons so arrested were these three accused, Sardara, Bansi and Pokha. The learned Sessions Judge does not say that they were arrested together; but he says that they were arrested under circumstances warranting the inference that they had gone to the Etah district on one and the same business. Sardara was produced before a Magistrate on the 1st of August, 1922, the next day but one after his arrest. To that Magistrate he made a detailed confession, admitting his complicity in dacoities which had just been committed in the Etah district and also referring to other dacoities committed by the same gang in other districts. Amongst the dacoities referred to in this confession is this offence committed at Majhaura for which the three accused have now been tried and convicted. In consequence of this statement, the three accused were placed, along with a number of other under-trial prisoners, in the Etah Jail on the 17th of August, 1922, when witnesses from Majhaura were brought to see if they could identify any of them. Evidence as to this identification proceeding has been given by the Magistrate under whose supervision it was conducted. The result, so far as we are concerned, was that one witness, by name Angan Lal, picked out the accused Sardara and Bansi from amongst the entire number of persons paraded before him for identification. He has been consistent throughout in his statement in respect of these two men. He says they were amongst the dacoits who committed the offence at Majhaura and that Sardara had a gun. It was a dark night, but the dacoits had lit torches inside the house and, when they were leaving the house, the witness deposes that they passed quite close to him. The witness made no mistake in his identification; that is to say, he did not profess to recognize any of the persons placed before him except Sardara and Bansi. One other witness, by name Biba Ram, picked out the accused Bansi and Pokha as persons whom he

recognized' as having been amongst the dacoits at Majhaura; but he also picked out and made the same assertion concerning an under-trial prisoner who admittedly had nothing whatever to do with the dacoity at Majhaura. His evidence is, therefore, discounted to this extent, that he has shown himself capable of making a wrong identification. We need not refer for the moment to the proceedings taken in the Aligarh district in respect of the dacoities committed there. The record of the present trial shows that when these three accused persons were placed on their trial at Moradabad, they simply pleaded not guilty. There is nothing in the statement of Sardara to the effect that he had been tendered a pardon in the Etah district. He did not make a statement to this effect before the Committing Magistrate at Moradabad, nor did he offer any such plea in the sessions court. In his petition of appeal to this Court what he says is that, having been tendered a pardon, he gave evidence as a prosecution witness in connection with one dacoity committed in the Etah district and one dacoity committed in the Aligarh district. He adds that, as a matter of fact, he knew nothing whatever about any dacoity committed in the Moradabad district, but that after his arrest the police had suggested to him that he should include his Moradabad dacoity in his statement and he had fallen in with the suggestion.

2. It was after examining this petition of appeal that the question was raised before the Bench hearing the said appeal as to whether Sardara ought to have been tried at all by the Sessions Judge of Moradabad. It is quite true that he did not plead in that sessions court any pardon in bar of his trial; but in the case of a prisoner of this class, not represented by counsel, it would not be fair to press such a point against him. This Court has, therefore, undertaken to investigate the question whether there was or was not in existence a Magistrate's order, having the effect of a valid tender of pardon in respect of this offence at Majhaura, of which Sardara has now been convicted, which pardon the said Sardara could have pleaded in bar of the trial. In the record of the Etah dacoity, sessions trial No. 57 of 1922. we do not find any formal order drawn up by the Committing Magistrate, or by any other Magistrate, of the kind presupposed by the provisions of Section 337 of the Code of Criminal Procedure. We do find, however, something which may be treated as, for practical purposes, the equivalent of such a proceeding. It appears that on the 6th of September, 1922, Sardara was produced before Mr. Abdul Haq, a

Magistrate of the first class. The Magistrate began his examination of Sardara by recording the following questions:

Are you prepared to accept a pardon upon this condition, that you shall state accurately and fully all the facts known to you concerning (or connected with) the Nagla Kunji dacoity

3. The accused replied: 'Yes, I am so prepared.'

4. Upon this a statement was recorded bearing on this dacoity at Nagla Kunji. There is nothing in that statement which refers to the offence for participation in which Sardara has now been convicted. Accepting this record as proving the tender of a pardon to Sardara under the condition prescribed by Section 337 of the Code of Criminal Procedure, we are satisfied that this tender was only in respect of the offence then under investigation by Mr. Abdul Haq, Magistrate of the first class. That was the offence of dacoity committed at Nagla Kunji in the Etah district. The pardon as tendered has clearly no reference to the dacoity committed more than a month previously at this village of Majhaura in the Moradabad district. Reference might of course be made to Section 339(2) of the Code of Criminal Procedure; but we are bound to note that the statement which has been tendered in evidence against Sardara at this trial is not the statement which he made to Mr. Abdul Haq on the 6th of September, 1922, nor any other statement made by him subsequently to the tender of pardon. What is being put in evidence is his original confession before another Magistrate made on the 1st of August, 1922. We are satisfied that there is nothing in Section 339 of the Criminal Procedure Code which forbids this, confession of the 1st of August, 1922, from being put in evidence. We have been referred to, and have carefully considered, the ruling of a learned Judge of this Court in the case of *Queen-Empress v. Ganga Charan* (1888) I.L.R. 11 All. 79. That case is certainly distinguishable. In the first place, the statement which was being put in evidence against the accused Ganga Charan in the reported case was the very statement which he had made after a pardon had been tendered to him and on the strength of that tender of pardon. In the second place, the learned Judge of this Court, having gone into all the circumstances under which pardon had been tendered to and accepted by Ganga Charan,

satisfied himself that the offences for which Ganga Charan was afterwards being put upon his trial in another district (and indeed in another province) were so connected with the offences in respect of which he had accepted the tender of pardon, and had given evidence as a witness at the first trial, that they were covered by the terms of the pardon which had been tendered to Ganga Charan. For the reasons already indicated, we are unable to say the same of the offence committed at Majhaura with which we are concerned in the present case. We hold, therefore, that, apart altogether from the fact that no pardon was pleaded in bar of trial in the present case, there was as a matter of fact in existence no pardon which could legally have been pleaded by Sardara in bar of his trial in respect of the offence for which he was tried and convicted by the Sessions. Judge of Moradabad.

5. We now come to the evidence in the case. Sardara has been convicted on the confession made by him on the 1st of August, 1922, taken with the evidence of Angan Lal. In our opinion, he was rightly convicted upon this evidence. There is no reason whatever to distrust the bona fides of Angan Lal's evidence, and he showed himself capable of identifying two men accurately out of the dacoits whom he had seen at Maihaura. Moreover, Sardara's confession, made on the 1st of August, 1922, has been proved in the present case by the Magistrate who recorded it, and we have the Magistrate's testimony to the fact that it was made voluntarily. It seems altogether a far-fetched suggestion that the police of the Etah district, the moment these men arrested under suspicious circumstances had fallen into their hands, should have thought of coaching one of them to make a full confession in respect of a dacoity committed more than a month previously in another district. There is no room for the suggestion that this confession of the 1st of August, 1922, was prompted by any promise of pardon. The Magistrate who recorded it took pains to satisfy himself on this point; moreover, the promise of pardon was made more than a month later in consequence of this confession, and not this confession in consequence of any promise of pardon. We are satisfied that Sardara has been rightly convicted.

6. As regards Bansi we come to the same conclusion. There are two identification witnesses against him and the cumulative effect of such evidence is always

important. He is also implicated in the retracted confession of Sardara.

7. We are less satisfied with regard to Pokha. The only identification evidence against him is that of the witness Biba Ram, who proved himself capable of making a bona fide mistake in identity. He is only implicated in Sardara's confession in vague and general terms. The circumstances of his arrest, on which considerable stress is laid by the learned Sessions Judge, would no doubt serve to supply a considerable degree of corroboration of Sardara's assertion that this man Pokha, along with Bansi, was concerned in the dacoity committed at Nagla Kunji in the Etah district immediately prior to their arrest; but it does not supply any real corroboration of Sardara's statement that Pokha, along with Bansi and others, had been concerned in the Majhaura dacoity more than a month previously. In our opinion the evidence against Pokha falls short of satisfactory or conclusive proof. We accept his appeal, set aside the conviction and sentence against him and direct that, so far as this matter is concerned, he be set at liberty. We have finally to consider the question of sentence as against Sardara and Bansi. The learned Sessions Judge, in entire ignorance of the facts we have ascertained as to the previous dacoity cases in the Etah and Aligarh districts, was no doubt justified in passing sentence of death upon Sardara in the present case. The dacoity was a serious one, the murder of two villagers was a cruel and wanton act and the act itself was brought very close to Sardara by evidence that he was himself carrying a gun at the time. We think, however, that the public service done by Sardara in giving evidence for the Crown in two cases in the Etah and Aligarh districts, which we know to have resulted in the conviction of other members of the gang, deserves recognition at least to this extent, that he may be permitted to save his own neck from the rope. If we set aside the sentence of death against Sardara, we feel that we must do the same in the case of Bansi. Accordingly, we accept the appeals of Sardara and Bansi to this extent only, that, while affirming the conviction recorded in respect of each of them, we set aside the sentence of death and, in lieu thereof, direct Sardara and Bansi to undergo transportation for life.