

Yashpal Vs. Emperor

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Court : Allahabad

Decided On : Apr-12-1933

Reported in : AIR1933All627; 147Ind.Cas.1193

Appellant : Yashpal

Respondent : Emperor

Judgement :

Bennet, J.

1. This is a reference by the learned Sessions Judge of Allahabad, in a case in which the jury by a majority of four to one acquitted one Yashpal of a charge under Section 19(f), Arms Act, and the learned Sessions Judge has recommended that the accused should be convicted as, in his opinion, the verdict of the majority of the jury is perverse. There is also before us an appeal by Yashpal of a conviction by the learned Sessions Judge under Section 307, Penal Code, and a sentence of seven years' rigorous imprisonment. The two proceedings relate to the same transaction and there was one trial in which the jury were assessors in the charge under Section 307, Penal Code. The evidence in the case consists mainly of the statement of Mr. Pilditch, the Superintendent of Police in the C.I.D. Branch stationed at Allahabad. He states that very early, on the morning of 23rd January 1932, he received information that Yashpal who was a proclaimed offender wanted in connection with various offences was to be found at house No. 26,

Hepwett Road, in Allahabad City. Mr. Pilditch went to the Superintendent of Police, at 2 a.m., and made arrangements for a raid at 6 a. m. Accordingly, at that hour, a party of police arrived at the house in question and, as previously arranged, certain police were posted outside on both sides of the house and Mr. Smith, Assistant Superintendent of Police, with a party of police, and Mr. Pilditch, with another party of police, proceeded upstairs to the second storey. There, at the top of the stairs, Mr. Smith and his party turned towards the right to enter the open space of the roof and Mr. Pilditch and his party knocked at the door to search the rooms of that storey.

2. After a quarter of a minute the door was opened by a European woman, who was known as Mrs. Jafar Ali alias Savitri Devi. Mr. Pilditch noticed three beds in that storey and asked her whose beds they were' and she replied that they were all her beds. He did not believe the story and moved rapidly on through the rooms. After passing through several rooms he came to the end of the rooms where there was an open door leading on to an open space on the roof. Beyond this open space there was a partition wall of corrugated iron sheets slightly over 6 feet high and he observed a white figure endeavouring to climb this partition. At the time it was dark and he could not see distinctly. He challenged the white figure and moved towards it. As he moved forward the figure fired a shot. He returned the fire and the figure disappeared on the other side of the corrugated iron partition. Mr. Pilditch went up to the partition and found that he could not look over it. He then got on to the top of a parapet beside the partition. He saw open roof on the other side of the partition bounded a few yards away by a wall which had a door in it and at the side there was a sheer drop of thirty feet into the street. He saw the figure in the space of the open roof and the figure fired at him a second time. He fired twice at the figure taking cover behind the corner of a fence. He then found on peeping over that the figure had come back to the fence apparently to take cover under it and from the short distance of less than two yards the figure fired a third shot at him but missed him. He replied with two more shots. A revolver was then thrown over the fence and two hands were put up and a voice cried 'I am unarmed.' Mr. Pilditch got down from the parapet and stood with his pistol ready and told the man to come over the fence to his side. He came over the fence and the Deputy Superintendent who had come up by this time secured the man. The

man was the accused, Yashpal, and the revolver produced in Court was the revolver which was thrown over the fence. Mr. Pilditch examined the revolver at the time and found that it had three loaded cartridges and three cartridges which 'had been fired. The man was then taken to the police station and the usual report was made. A map has been produced of the place. The accused was asked at his trial what he wished to say and he replied:

In the present situation I do not wish to say anything. I have already said that I am not guilty. I do not wish to produce any defence.

3. Various arguments were made in this case in the Court below as to the possibility of the existence of a third person and as to whether the shots might not have been fired by the accused before the Court. The evidence of Mr. Pilditch clearly shows that there was no third person present. It is true that there were three beds and this indicates as Mr. Pilditch says that there was a third man residing in that place but he was absent at the time. It is clearly shown by the evidence of Mr. Pilditch that the man who was in the open part of the roof and who was firing at Mr. Pilditch was the accused as Mr. Pilditch had said that this man was under practically continuous observation all the time. There is also no denial by the accused that he was the man who fired at Mr. Pilditch. No argument has been made on this point by the defence in this Court.

4. The only point which is urged by the defence is that the accused may have fired in the air without any intention of aiming at Mr. Pilditch and therefore there would be no intention to commit an offence under Section 307, Penal Code. If there was no other evidence on the record except the statement of Mr. Pilditch that the accused had fired certain shots when he was attempting to arrest him we still consider that the accused would be guilty under Section 307, Penal Code. Our reason for this conclusion is that under Section 106 of the Indian Evidence Act: 'When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him.' Illustration (a) says:

When a person does an act with some intention other than that which the character and circumstances of the act suggest the burden of proving that intention is upon him.

5. If a man fires off a fire arm while a police officer is attempting to arrest him, the natural conclusion is that he is attempting to shoot the police officer. If the defence is that he had merely the intention of frightening the police officer by firing in the air then the burden of proving that fact is upon the defence. In the present case the defence have not given any evidence to the effect, and the accused has not pleaded, that he fired in the air. The defence therefore would fail in view of this provision. But there is positive evidence on the record to that effect that the accused did attempt to shoot at Mr. Pilditch and did not merely attempt to fire in the air. Mr. Pilditch has stated in regard to the second and third shots that these were directly aimed at him. He has given reasons for that conclusion. His reasons are as follows: When a fire arm is discharged in the dark there is a streak of light visible proceeding from the muzzle of the fire arm for a certain distance. If the person who observes the streak is the person aimed at, then he will see not a streak of light but a point. If the person observing the light is not aimed at, but is towards the side of the line of light then he will see not a point of light but a line or a streak of light. Mr. Pilditch states that in regard to the second and third shots what he observed was a point of light and not a line of light and therefore he concludes that these shots were aimed at him. In regard to the first shot he states that in the hurry of the moment and the unexpectedness of the shot he was not able to observe whether it was a line or streak of light. Clearly therefore the evidence shows that the accused did aim at Mr. Pilditch and therefore his intention was to shoot Mr. Pilditch. The intention to shoot a person with this fire arm is an intention to commit the offence under Section 307, Penal Code, as the revolver in question is a deadly weapon being a service revolver. Under these circumstances we consider that the conviction under Section 307, Penal Code, was correct and the sentence of seven years,' rigorous imprisonment is also, in our opinion, correct, and we dismiss the appeal of Yashpal.

6. With regard to the reference by the learned Sessions Judge, the facts which we have set forth, convince us that the finding of the jury was perverse. The evidence of Mr. Pilditch shows that the accused was in possession of a revolver and he has further stated that that revolver is a Government revolver and has marks on it which show that the revolver and the barrel were condemned by the Arsenal. The procedure is that such condemned weapons should be broken up but by some

improper acts this revolver was not broken up; and has passed into the possession of the accused. The accused has not pleaded that the revolver was not in his possession and clearly therefore the accused was guilty of the offence of illegal possession of this revolver as he has not pleaded that he has a license. One further point remains. The Magistrate, Mr. Crofts, framed a charge only under Section 19(f), Arms Act, for possession of the revolver and did not add to the charge that the possession was in such a manner as to indicate an intention that the possession might not be known to public servants and thus bring the charge within the further provisions of Section 20, Arms Act. The learned Sessions Judge, Mr. Mulla, also failed to amend the charge in that respect. We would invite the attention of these two officers to the fact that the charge should have been framed under Section 19(f) and under Section 20, Arms Act. Under the circumstances the question is what action we should take in the matter. Section 307(3), Criminal P.C., lays down that the High Court when dealing with a reference by a Sessions Judge from the verdict of a jury may convict the accused person of any offence of which the jury could have convicted him upon the charge framed and placed before it. Section 236, Criminal P.C., lays down that:

If a single act or series of acts of such a nature that it is doubtful which of several offences the facts which can be proved will constitute the accused may be charged in the alternative.

7. Section 237(1) lays down that if, in the case mentioned in Section 236, the accused is charged with one offence, and it appears in evidence that he committed a different offence for which he might have been charged under the provisions of that section, he may be convicted of the offence which he is shown to have committed, although he was not charged with it. We consider that the jury might have convicted the accused on the present charge under Section 19(f) read with Section 20, Arms Act. We consider that, as a matter of fact, the ingredients of Section 20 are proved in the present case. The accused person had this revolver in his possession and when the police appeared he attempted to run away with his revolver and he also attempted to shoot Mr. Pilditch with his revolver. His intention therefore was that his possession of the revolver might not be known to the police, that is, that he might make his escape with the revolver. Accordingly we convict

the accused, Yashpal, under Section 19(f) read with Section 20, Arms Act, and sentence him to seven years' rigorous imprisonment. This sentence will be consecutive with the sentence passed under Section 307, Penal Code.

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