

Ujagar and ors. Vs. Emperor

Ujagar and ors. Vs. Emperor

SooperKanoon Citation : sooperkanoon.com/478831

Court : Allahabad

Decided On : Apr-05-1933

Reported in : AIR1933All834

Appellant : Ujagar and ors.

Respondent : Emperor

Judgement :

1. Fourteen persons were committed to the Court of Session of Cawnpore charged under Sections 302, 396, 436 and 147 of the Indian Penal Code. Against four of them further charges were under Section 307, I.P.C. The learned Sessions Judge acquitted no less than eleven but convicted Ujagar, Narain and Bandi Din; the first two under Sections 147 and 436, I.P.C. and the latter under Sections 147, 436, 307 and 302, I.P.C. Ujagar and Narain were sentenced to rigorous imprisonment for two years under Section 147, I.P.C., and for ten years' rigorous imprisonment under Section 436, I.P.C. Bandi Din was sentenced to two years' rigorous imprisonment under Section 147, I.P.C., ten years' rigorous imprisonment under Section 436, I.P.C., and ten years' rigorous imprisonment under Section 307, I.P.C. Under Section 302, I.P.C., he was sentenced to transportation for life; the sentences in all cases to run concurrently.

2. On 24th March 1931, the well-known-murderous riots in Cawnpore commenced. After raging there for a few days-the riot and slaughter spread to the surrounding villages. On the 28th and 29th March in the hamlets of Fatehpur. Barhat, Hingupur

and Paigupur, some seven miles from Cawnpore, the riots, the subject matter of the charges in this case, took place. The land in those hamlets is alluvial and used as grove-land. All the huts and dwellings of the Musalmans in that neighbourhood: were burnt and nine men, women, and children were murdered there. A band of 150 to 200 Hindus marched to this district at about 2 O'clock in the afternoon on the 28th and to the shouts of 'Glory to Mahatma Gandhi' butchered these men, women, and little children, and burnt their dwellings. We are not concerned whether there was a riot or not; that is admitted. The only question we have to consider is whether Ujagar; Narain and Bandi Din, those persons who have been convicted in the lower Court and who have appealed to the High Court, are guilty of the offences with which they were charged. Before we consider the cases of the individual accused we think it necessary to make some preliminary observations:

1. We ruled recently in the Raiya Riot case, *Shukul v. Emperor* : AIR1933 All314 , that the evidence of a witness proved to have committed perjury was of no value whatsoever and could not be used for any purpose; that is by itself, or to corroborate, or be corroborated by, truthful evidence. That ruling has been followed by a Bench of this Court of which one of us was a member in *Ram Kumar v. The Crown* and by one of us sitting alone in *Man Singh v. The Crown* : AIR1933 All401 . The reasons for that ruling have been sufficiently set out in the judgments in those cases and we do not need to repeat them here. We follow that ruling in this case in considering the value of certain witnesses for the prosecution. The learned Sessions Judge in a careful judgment in this case has for excellent reasons found the approver Babu Lal and a witness Madar Baksh guilty of lying. Nevertheless, in accordance with the practice too frequently followed in this country, he has relied on the evidence of both when corroborated. In fact he has gone rather further than is usual, for in the case of Bandi Din he has used the evidence of both these liars to corroborate each other in conjunction with the evidence of another unsatisfactory witness. On this evidence he has convicted Bandi Din. 2. In the case of Narain the learned Judge lays down a rule of law from which we strongly dissent. He says:

Evidence which may be good enough to prove a lesser offence may not necessarily reach the high standard which is required for convicting a man on a capital charge and inflicting an irrevocable sentence.

3. Narain was charged with murder and arson. There was the same evidence on both charges. The learned Judge on the murder charge, acting on the principle set out above, gives Narain the benefit of his doubt, but not on the arson charge. It cannot be stated too emphatically that there is only one standard of proof for all charges, and that is that the Crown must prove the charge beyond all reasonable doubt. The nature of the sentence cannot affect the question of proof. 3. In communal riot cases we think it unsafe to convict on the evidence of one witness alone, unless there is satisfactory circumstantial evidence in addition. 4. We again call attention to the unsatisfactory nature of the oath administered in Indian Courts to Indian witnesses. It surely is not beyond the resources of the legislature to discover an oath or oaths which Indian witnesses would respect.

4. We next consider the individual witnesses and the nature of their evidence:

(1) Babu Lal, approver.--This man undoubtedly took part in the riot and indeed we think it satisfactorily established that he actually murdered one of the victims. Of this man the learned Judge in the Court below says as follows But he did not impress me at all favourably as a witness and I do not think that his evidence can be trusted far. In his statement under Section 164 and in his examination in the Magistrate's Court in the case against accused 1 to 12 Babu Lal gave the Court to understand that he had taken no part whatsoever in the rioting which took place on the west of Bithur Road, but here he would have the Court believe that he was present when the groves of Manna and Rasul Baksh were attacked. Apart from the previous statements of Babu Lal, there are certain facts in the deposition which he has made in this Court which suggested that he has lied in saying that he took part in the attack on Manna's huts.... When asked whether it was a fact that he cut Allah Din's throat as alleged by Mt. Batulan, he gave the remarkable answer that he did not remember. The facility with which Babu Lal can lie is indicated by the fact that when the prosecutor by mistake asked him why he had not identified in jail those accused whom he has named, he replied that his reason for not doing so

was that the Circle inspector told him that there was no need for him to identify those men ; but when his attention was drawn to the fact that those accused were not paraded before him in jail at all, he said that he had given the above reply because he thought it was expected of him by the prosecutor.

5. Again in another part of the judgment the learned Judge say:

He either lied in his previous statements or else he is lying now. In any case, no reliance can be placed on what he states in this Court in respect of the incidents which took place on the west of the road.

6. The above observations of the learned Sessions Judge clearly establish that Babu Lal has sworn falsely. We discard the evidence of the approver Babu Lal in so far as it affects any of the appellants before us.

(2) Rasul Bakhsh.--With regard to this witness the learned Judge has said as follows:

Nor can I rely with any confidence on the testimony of Rasul Bakhsh.

7. Later on the learned Judge also observes:

I find it very difficult to believe that Rasul Bakhsh Kunjra had the courage to hide so close to his house... and I find it desperately hard to put any real confidence on Rasul Bakhsh's testimony. After having carefully considered the testimony of Rasul Bakhsh, I distrust it.

8. It is quite clear from these extracts with which we agree, that Rasul Bakhsh also is a witness of no value.

(3) Madar Bakhsh.--The learned Judge says of this man as follows:

Madar Bakhsh has identified Ram Bharose in jail and in Court. He pretends that he did not know Ram Bharose before; but in cross-examination he has had to admit that he had a quarrel with Ram Bharose in respect of some lemon trees which the latter uprooted and took away. He admits that he dunned Ram Bharose two or three times for the price of the lemon trees. He has therefore obviously lied

in saying that he did not know Ram Bharose and his evidence against the accused accordingly becomes suspect.

9. Again in another place the learned Judge says:

Madar Bakhsh denies having known Mulla before the riot; but when counsel for the accused made Mulla stand up in the dock and suddenly asked Madar Bakhsh where Mulla lived, the latter replied 'In Ishriganj'.

10. Further this witness has made various contradictory statements. On the 1st April Madar Bakhsh was taken to Hospital. He told the Sub-Inspector on that day that he did not know the names of any of the assailants, but later on the same date to a Magistrate in the hospital he gave the name of Bandi Din, one of the appellants in this case. In his statement in the Sessions Court he says:

Moslem raises of the city used to come and see the patients. They asked me how I had received my injuries. I do not remember whether I told them that I had not yet made a report. They asked me if I had recognized any of my assailants. I do not remember who asked me or where. They asked me in the hospital; I remember that I told them I could recognize two or four or six men if I saw them. I gave no names because I then knew no names.

11. It is to be noted that the interview with these Moslem raises took place some two or three weeks after this witness had named Bandi Din to the Magistrate on the 1st April. Further when several previous statements were put to this witness in cross examination he contradicted those statements or said that he did not remember whether he had made them or not. There is another curious incident with regard to this witness. On the record there appears what purports to be a first information report. It consists of a document Exhibit B, executed by Madar Bakhsh who placed his thumb mark upon it. That document purports to give an account of the riot and the injuries suffered by Madar Bakhsh and his relatives. It names several Hindus as having taken part in the riot. None of the persons named in this report were prosecuted by the police. This document was sent from the Hospital to the thana at Bithur and was recorded in that thana. Madar 'Bakhsh strenuously denies that he had anything to do with this document. But it was proved that the

thumb mark on it was undoubtedly that of Madar Bakhsh. The learned judge upon this finds that this first information report was probably prepared by some officious person and a thumb mark of Madar Bakhsh taken upon it without the knowledge of Madar Bakhsh when he was in hospital. We do not decide whether the learned Judge is right in this or not. But it is obvious however that either Madar Bakhsh is lying in this matter or that the document was prepared by some one for the purpose of falsely implicating some of the Hindus. In any event the document must leave an uneasy feeling in our minds. Madar Bakhsh gave evidence in this case against four of the accused. The Judge disbelieves him in two cases and does not rely upon his evidence in a third. With regard to Bandi Din, one of the appellants before us, however, he relies upon Madar Bakhsh as corroborating Babu Lal, the approver, about whose evidence we have sufficiently commented above. We are satisfied on a careful consideration of the above facts that Madar Bakhsh is a witness whom no one can believe and upon whom it would be unsafe to rely against any of the appellants.

(4) Ghonche.--This witness was originally in the police force in Cawn-pore and some years ago was convicted of arson and sentenced to rigorous imprisonment. He resided in the neighbourhood of the riot. He was also arrested by the police in connection with this case. It is said that he was arrested by mistake but we are not satisfied as to this. He is a Hindu and an out-caste. When we consider these facts we do not think it safe to rely upon his evidence. Further according to his cross-examination he cannot be a man of high character. No one could call him a good witness.

(5) Lukain: There is very little against this witness and we shall deal with the value of it when we come to consider the cases of the individual accused. (6) Munne: We will deal with this witness when we consider the case of Bandi Din against whom he gives evidence. (7) Daulat: He is an old man of 80 years who gave evidence against Ujagar alone and we shall consider its value when dealing with the case of this appellant.

12. Dealing with the individual cases of the appellants we shall consider first that of Ujagar. Three witnesses were called to give evidence against this appellant,

Daulat, Babu Lal and Rasul Bakhsh. From what we have said above we must ignore the evidence of Babu Lal and Rasul Bakhsh. This leaves one witness alone against Ujagar, namely, Daulat. On general principles we must say that in the case of a communal riot one witness is insufficient for a finding of guilty and on this ground alone we must allow the appeal of Ujagar. But we have this further to say about the evidence of Daulat that all he says against this appellant is as follows:

Many Hindus were at my huts. Four or five of them ran towards me. One of them struck me a lathi blow on the head. I fell. I recognized Ujar Kori of Ludhari. (Witness points out Ujagar.' One of others struck me. They bade me bring my money. I said I had none.

13. Ujagar said:

He is a poor man and he is half dead from one lathi blow. He will die from a second blow. Then they went towards Allahdin's huts. Ujagar went with them. I knew Ujagar from his childhood. My grove adjoins the boundary of his village and we...s-h-rizvi...have smoked ganja and charas together. Some of the 4-5 men who ran at me had kantas, some had spears and some had la this with a blade attached. Ujagar had a lathi.

14. The only thing that Ujagar. certainly appears to have done was to intervene for the benefit of Daulat and save him. from being murdered. We therefore set aside the convictions and sentence passed upon Ujagar and order his immediate release.

15. Narain.-- Four witnesses give evidence against this appellant. They are Ghonche, Lukain, Rasul Bakhsh and Babu Lal. The evidence of Rasul Bakhsh, Babu Lal and Ghonche must be discarded for reasons already given. With regard to Lukain, the only evidence that this witness gives is that he saw Narain coming hack with a crowd after Kaniya's house had been burnt. He did not see any one actually at this house. He further saw this accused going on to Narain's grove afterwards with the mob. Apart from the fact, as we have pointed out above, that in a communal riot case one reliable witness is insufficient for conviction, we have the fact that the learned Judge himself clearly records that he has a doubt as

regards this accused. The learned Judge records as follows in his judgment:

On the other hand, there is DO evidence to show that Narain actually took part in the assaults and murder which were committed in Manna's grove ; in fact there is no evidence to show what he did. at all in Manna's grove ; but the fact that he was among those who began to set fire to the cart of Rasul Bakhsh at Lukain's huts leads to the inference that he at least shared the common object of committing arson. It may be argued that it can also be inferred that he... shared the common object of committing murder. It may be so, but as I have already said, there is nothing to show what he did in Manna's grove or whether he went to Allahdin's grove ; and in any case I think that evidence which may be good enough to prove a lesser offence may not necessarily reach the high standard which is required for convicting a man on a capital charge and inflicting an irrevocable sentence. I therefore prefer to give Narain the benefit of doubt in respect of the charge under Section 302. In my opinion he is liable to be convicted under Sections 147 and 436.

16. It is clear in this case that the evidence both on the murder charge and the arson charge is precisely the same. There is no doubt according to the evidence that this appellant was with the crowd when the murders were committed. He was also with the crowd and that is all when arson was committed. The learned Judge however thinks that a lesser standard may be applied as regards the evidence on the offence which is not punishable with hanging, but that a higher standard is necessary where hanging is involved. He, therefore, gives the benefit of the doubt in respect of the charge of murder but refuses to give it in respect of the charge involving arson. We dealt with this question in our preliminary observations. This appellant ought to be given the benefit of the doubt on both charges.

17. Viewing the case as a whole as against this accused we come to the conclusion that the conviction against him cannot stand. The convictions and sentences therefore are set aside and this accused will be set at liberty.

18. Bandi Din.-- With regard to this appellant the witnesses are Babu Lal, Rasul Bakhsh, Ghonche, Madar Bakhsh and Maniya. From what we have set out above we cannot rely upon the first four. This leaves Munne only. Apart from the fact that

the evidence of one witness is not sufficient the only evidence which Munne gives is that of identification, and the learned Judge says of this identification that it was quite possible that he was familiar with the features of Bandi Din. Therefore there is not much value in this evidence. Madar Bakhsh certainly gave the name of Bandi Din in a statement which he made to the Magistrate on 1st April after having failed to name him to the Superintendent of Police on the same day. But the Bandi Din whom Madar Bakhsh named to the Magistrate was Bandi Din a Mallah and a resident of Charana. The Bandi Din, the appellant, is a Kachhi and a resident of Tisjha. As the learned Judge points out this may possible be an error because Tisjha adjoins Charana. We think that some doubt must be raised by the misstatement of the man's caste and his place of residence. In any event, we are satisfied that there is not enough evidence upon which to record a conviction against this accused.

19. The result is that we set aside the convictions and sentences passed upon Bandi Din and order that he be set at liberty.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com