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Court : Allahabad

Decided On : Jul-20-1935

Reported in : AIR1935All931; 159Ind.Cas.26

Appellant : Emperor

Respondent : Bhaggan and ors.

Judgement :

1. Forty-seven persons were put on their trial before a Magistrate of Ghazipur on charges under Sections 145 and 152, Penal Code. The trial Court convicted 18 of the accused under the above named sections and sentenced each of them to undergo one year's rigorous imprisonment on each count, the sentences to be concurrent. The rest were acquitted. The 18 persons who were convicted appealed to the Sessions Judge and the latter allowed the appeals of eleven of them. As regards the remaining seven he altered the conviction to one under Section 151, Penal Code, and reduced the sentences to 3 months rigorous imprisonment.

2. The Local Government have appealed against the acquittal of these 18 persons under Sections 145 and 151, Penal Code, and have also filed an application in revision praying that in the alternative the sentences which have been inflicted upon 7 of the accused be enhanced.

3. Notice has not been served on respondent No. 11, Mulchand, and so his case is not before us. The facts of the case - about which there is little dispute - may be briefly stated as follows : A few months before this occurrence a Musalman weaver, by name Gharib, dreamt that a martyr was burried at a certain spot within the confines of, the village of Kusmi Khurd on the southern bank of the Karari river. This dream appears to have created a sensation in the neighbourhood and people soon began to say and believe that the spirit of the martyr had the power of performing miracles, and after a while a tomb was erected at that place and a bamboo fencing was put up round it. Thereafter, on Thursday of each week, Gharib lighted a lamp at the tomb and a crowd of people would assemble there, mostly Hindus of the lower classes and many of them women. One day a report got about that some Hindu women had been molested at the tomb by certain Mussulmans and this created resentment in the minds of many Hindus. On 25th April 1934 someone or other pulled down the bamboo fencing which was round the tomb and there can be little doubt that this was done by Hindus. There is also reason to suppose, that the Hindus decided to boycott the tomb. Anyway on the following day, i.e., 26th April, a chaukidar named Qasim Shah and a man named Mohammad Faiyaz, who is said to be the nephew, of a retired police officer, took steps to ensure that both Hindus and Musulmans should continue to assemble at the tomb on each Thursday of the week as heretofore. These two imaginative mischief makers broadcast a message to the effect that only Hindus who failed to attend at the tomb on 3rd May would be deemed to have eaten beef and that any Mussulmans who likewise defaulted would be deemed to have eaten pork; and at the same time a rumour was spread to the effect that on that date a cow would be sacrificed at the tomb.

4. Meanwhile, on 1st May, a certain chaukidar made a report at the Nandganj police station that there was a likelihood of trouble occurring between Hindus and Mohamedans at this tomb. The Superintendent of Police was informed and he forthwith suspended Qasim Shah and initiated proceedings under Section 107, Criminal P.C., against Mohammad Faiyaz. The Superintendent of Police also had a consultation with the District Magistrate, in consequence of which Mr. Niblett, the Sub-Divisional Magistrate, was directed to be present on the spot on 3rd May. Mr. Niblett went to the Nandganj police station on the evening of 2nd May but Sub-

Inspector, Muhammad Ismail Khan told him that he did not think there was likely to be any really serious trouble. However by way of precaution Mr. Niblett gave Muhammad Ismail Khan a notice under Section 144 which the latter was to utilise in case of necessity, and he then left the police station, saying that he would return at 3 p.m., the next day, which was the time at which people were in the habit of collecting at the tomb. Meanwhile the Superintendent of Police received information from a constable of Benares which seemed to lend some gravity to the situation and accordingly he sent five mounted police to Nandganj and sent word to Mohammad Ismail. Khan to be present at Kusmi Khurd on the morning of 3rd May, informing him at the same time that the Sub-Divisional Magistrate would also be there. On the morning of 3rd May Abdul Karim, the Sub-Inspector in charge of the neighbouring police station of Shadiabad, came to Nandganj at the invitation of Mohammad Ismail Khan and brought two constables with him. Mohammad Ismail Khan sent his second officer Kashi Prasad and two constables to Kusmi Khurd and he deputed a third constable to try and stop people from approaching that village. At about 11 a.m., a report was received that a crowd of Hindus had collected on the north side of the river and accordingly Mohammad Ismail Khan and Abdul Karim went and collected Kashi Prasad and the three of them crossed the river which in fact is only a, stream and reasoned with the crowd. Members of the crowd told the police officers that they had heard that a cow was to be sacrificed at the tomb; but the police officers assured them that there was no truth in the report and ultimately the crowd was induced to go back. It is alleged that this was the first occasion on which the police officials came to know that there was any rumor abroad that a cow was to be sacrificed.

5. At about 2 p.m., a very much larger crowd of Hindus collected in the open ground on the south of the Karari river and began to approach Kusmi Khurd. The crowd was in an angry mood and members of it were shouting 'maro, jan lenge aur jan denge; loot lo.' The police tried to reason with the crowd, but they found themselves up against a much more difficult proposition than in the morning. The mob was in no mood to listen to reason or argument and Sub-Inspector, Abdul Karim, states that a man attacked him with a spear, but he was able to ward off the blow. Sub-Inspector Mohammad Ismail Khan, thereupon ordered the mob to disperse and he says that he warned them that he would fire if his order was not

obeyed. This had no effect and so Sub-Inspector, Mohammad Ismail Khan ordered some of his men to fire and he himself fired a couple of shots with his revolver, presumably in the air, since no one apparently was hit, although he says that the front rank of the crowd was only five or six yards away. Whether any other shots were fired on that occasion by the police is not clear, but probably they were not. As a result of the two shots which the Sub-Inspector fired the crowd fell back to some distance, but they took courage when some of their members said that the police had only blank cartridges. Meanwhile, Mr. Niblett arrived on the scene at about 3 p.m. He had first gone to the police station, but had hurried thence to the scene of occurrence on learning that the Sub-Inspector was already there. Sub-Inspector, Mohammad Ismail Khan, reported the situation to him and Mr. Niblett directed him to disperse the crowd again and to make arrests and if necessary to fire into the crowd. Thereupon the police advanced towards the crowd and arrested one man, but they were met with brickbats and the crowd actually stood up to the police with lathis. Seeing this, Mr. Niblett gave a definite order to fire. This was obeyed and in all twenty eight shots were fired. It does not appear that any one was hit, but anyway the firing had the desired effect and the mob dispersed many of the rioters running to the neighbouring village of Sarkatha. These were pursued by the police and a large number of persons ware arrested with lathis in their hands in the village of Sarkatha.

6. The defence of most of the accused was in the nature of an alibi except that one or two of them alleged enmity with the police officials.

7. The learned Sessions Judge was of opinion that the only possible clause of Section 141, Penal Code, under which the case might fall was Clause (5); but he was of opinion that that clause was not applicable by reason of the fact that the Mussalmans had no right to sacrifice a cow at this mob. The Judge observes:

The Muhamedans had certainly no right to sacrifice any cow at or near a tomb at a place open to the public gaze so as to offend the religious feelings of the Hindus, and if therefore the intention of the crowd was to prevent any such sacrifice, it is very doubtful if their object would fall within the purview of any of the clauses of Section 141, I.P.C.

8. It is not necessary for us to record a finding as to whether if the Mohamedans had in fact intended to sacrifice a cow, such act would have been legal or illegal. We will assume for purposes of this appeal that it would have been an illegal act. After having recorded the finding to which we have referred above, the learned Judge on p. 112 of the paper book observes:

But the fact remains that a big crowd had collected and from a threatening attitude it was clear that there was an apprehension of a breach of peace.

9. On this finding we are unable to comprehend how he was able to persuade himself that there was no unlawful assembly. His view apparently is that if a rumour is spread to the effect; that certain Mohamedans are intending to sacrifice a cow at some spot, outside the habitation of the village, the Hindus from the surrounding villages have a right to collect with lathis and take the law into their own hands. We are unable to subscribe to any such justification of mob law. There is no provision of law whatsoever which gives any person or body of persons a right to use force and violence to prevent their feelings being wounded by an illegal act. In the present case there is not even the mitigating circumstances of the existence of or near the spot of a sacrificial cow or any sign of preparation to perform such sacrifice; and even if there had been any such preparation, it could not be said in extenuation that the Hindus had no opportunity to have recourse to the authorities, for it is in evidence that no less than three Sub-Inspectors were present on the spot and later the Sub-Divisional Magistrate himself appeared. The learned Judge is of opinion that Sub-Inspector, Mohammad Ismail Khan, played a sinister part in the whole affair; but Sub-Inspector, Abdul Karim - against whom the learned Judge has nothing to say has deposed as follows:

There was a crowd of 3000-4000 of various groups on this side of the river. The crowd was armed with lathis and spears and some had swords. The three sub-inspectors went forward to stop the crowd and began to 'samjhao' them. The crowd however said 'loot-lo Kusmi aur maro'.... I again told them that there would be no qurbani and told them to go home. For about 1 1/2 or 2 hours I tried to persuade them in this way, but they continued to advance and came nearly up to the police force.

10. His further evidence is corroborated by Mr. Niblett, who states:

I called out to the sowars who were some distance from me 'giriftar karo' and at the same time I said 'if these people do not run away, fire.' There were at least 300 or 400 people on the maidan besides the 100 I have already mentioned. They were all armed with lathis. Some sowars arrested one man. But the 100 who had proceeded to Sarkatha stood still about halfway between Kusmi and Sarkatha and showed no signs of dispersing. I called upon the sowars to charge them. As they approached the crowd picked up clods of earth and other brickbats and threw them at the sowars and when the sowars came up, they turned on the sowars and checked their charge. I mean that they turned on them with their lathis. Seeing that the situation had become critical, I shouted out 'chalao sachcha, chalao goli, ek do gir jawe.' On this Ajudhia Pathak, and armed constable, took aim and fired at a man who I think was attacking Mohamed Ismail, Section 1. The shot seemed to strike him. On this the other constables, sowars and sub-inspectors started firing. This checked the rioters and they turned and fled into Sarkatha village.

11. From the above evidence and also from the evidence of Sub-Inspector, Mohammad Ismail Khan, and Sub-Inspector, Kashi Pershad - who incidentally is a Hindu we find it proved that a large crowd of Hindus collected with lathis in their hands and at least one of them with a spear and that they had the unlawful intention of using force and violence in order to prevent a sacrifice which they supposed was about to be performed, and it is obvious that such a crowd was an unlawful assembly within the meaning of Section 141. When ordered to disperse, the crowd opposed the police with force. If the charge had been more carefully framed, the case would have fallen within no less than three clauses of Section 141; but in any case it is manifest that the charge as framed under Section 145 and also the charge under Section 152 has been fully established. We cannot accept the proposition - which however has been accepted by the learned Judge that members of one community can be allowed with impunity to take their lathis and assemble for the purpose of using force and violence to prevent the sacrifice of a cow, by members of the opposite community who had no such intention, at a tomb which had been erected over the supposed resting place of the nonexistent remains of an imaginary saint, and that such an assembly is not unlawful. The

assembly would have been equally unlawful if the Mohamedans had in fact intended to perform such a sacrifice. It would be a waste of time to elaborate this matter any further.

12. The learned Sessions Judge has thought fit to censure Sub-Inspector, Mohammad Ismail Khan, very severely; and the counsel for the majority of the respondents has also pressed before us the alleged misconduct of the Sub-Inspector. Apparently the case against Mohammad Ismail Khan is that the latter knew that there was going to be trouble and did not disclose it to the Superintendent of Police or the Sub-Divisional Magistrate, because he wanted it to occur in order that he might have an opportunity of firing upon the Hindus. When we put it to learned Counsel in this way, he said that he did not wish to go to that extent, but there can be no doubt that this is what his argument amounted to. That such a charge is unfounded is proved by the fact that apparently no one in the crowd was hit and by the fact that from among the 18 respondents Mohammad Ismail Khan has only deposed against one. The criticism which the learned Judge has levelled against this Sub-Inspector was irrelevant and in our opinion the strictures were undeserved. The Judge makes much of the fact that the Sub-Inspector - in obedience to an order from his Superintendent of Police - left his police station on the morning of 3rd May and went to Kuismi Khurd without awaiting the arrival of the Sub-Divisional Magistrate who was due at 3 p.m. The learned Judge observes:

It is true that the Sub-Inspector of Police obeyed the Superintendent of Police, but at the same time I do not think that he should completely ignore his S.D.M. I agree with what was stated by Mr. Blunden and which has been quoted above. The fact that Sub-Inspector Mahomed Ismail Khan wanted to ignore the existence of the S.D.M. shows that there was something which he did not want to bring to the notice of the S.D.M. It is expected that the S.D.M. would be in the know of things going on in his sub-division, specially if he is attached to the sub-division for some time. Therefore as the S.I. in this case tried to ignore the existence of the S.D.M., his action cannot be too severely condemned. I hope and trust that this matter will be taken notice of by the District Magistrate and that he will take such action as he deems necessary. This action of the S.I. throws a great doubt on his bona fides.

13. We do not know whether the District Magistrate has thought fit to take any action, but we can say that there is nothing on this record to justify the strictures of the Sessions Judge. The utmost that on the evidence before us can be said against the Sub-Inspect or is that he perhaps misjudged the strength of local Hindu feeling and that he would have been better advised to send a chit to the Sub-Divisional Magistrate before leaving his police station and proceeding to the spot.

14. We now have to consider which, if any, of the respondents are liable to conviction under Sections 145 and 152, Penal Code, the quantum of evidence against most of the respondents is slight but this very fact goes to indicate the bona fides of the witnesses and gives strength to the evidence. There has been no attempt at exaggeration on the part of the witnesses and no desire to implicate the rioters wholesale, and no one appears to have displayed any particular animus against anyone else. It appears to us that the witnesses have for the most part honestly named or identified those persons whom they saw in the riot and in our opinion the restrained and cautious evidence of the police officials is particularly valuable.

15. We will now deal with the respondents in detail. (Their Lordships then dealt with the case of each accused separately). AS regards those of the respondents whom we have found to have been members of this unlawful association all pleaded alibi, but we are of opinion that the trial Court was right in rejecting their plea. They are all residents of villages other than Sarkatha and they have not satisfactorily established any good reason for their presence at Sarkatha at the time of their arrest. In face of the evidence for the prosecution it is impossible to accept their plea of alibi. In the result we dismiss the Government appeal in respect to Janki, Parshad, Sukhdeo, Ramrup, Bhaggan, Rajju, Bindeshri, Deo Narain and Sahti. We allow the Government appeal as against Sukhu, Ramai, Dubri, Sumer. Sobhit, Budhram, Guthru and Babunandan. We convict them under Sections 145 and 152, Penal Code, and we sentence them to be rigorously imprisoned for six months under each section the sentences to be concurrent. Such of them as have already served a portion of their sentence will now serve out the remainder thereof.

16. As regards the application for enhancement, we acquit Bhaggan and Ramrup in the exercise of our revisional powers. As regards the other respondents to this application there is no need to pass any order in view of our judgment in the criminal appeal on behalf of the Local Government.

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