

Yad Ram Vs. Emperor

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Court : Allahabad

Decided On : Feb-25-1926

Reported in : 94Ind.Cas.359

Judge : Kanhaiya Lal and ;Boys, JJ.

Appellant : Yad Ram

Respondent : Emperor

Judgement :

1. This riot case really presents very little difficulty on either the law or the facts. A riot took place at Jalalpur. As usual both sides were sent up, the Police leaving it to the Magistrate to convict both sides if he wished. In Trial No. 21 the accused, the complainants in the present case, were all acquitted. In Trial No. 23 against 17 persons including the present appellant the Magistrate convicted the other sixteen under Section 325 read with Section 147 of the Indian Penal Code, and acquitted Yad Ram. We accept for the purpose of the present appeal, that the Police sent the accused up on charges under Sections 147 and 302, it being the fact established beyond doubt that one Mohan who was one of the present complainants' party, was killed in the course of the riot.

2. The sixteen men appealed to the Court of Session and their conviction was set aside and their commitment ordered on charges including one under Section 302. That case was finally disposed of by the upholding of the conviction of a number of

men by this Court including the sentences of several of them to transportation for life. At the conclusion of that case in the Sessions Court the Assessors asked the Judge to record their opinion that in fact the present appellant before us, Yad Ram, ought to have been committed to the Court of Session too, as he was equally guilty with the other accused. As a result of this the District Magistrate ordered the committal of Yad Ram to the Court of Session on a charge of murder. As a result of that commitment Yad Ram has been convicted. The learned Sessions Judge has found the accused guilty under Section 302 of the Indian Penal Code and finding his guilt to be equal with that of Bed Ram, Lekha, Ganga and Dan Sahai, the four men who received the sentence of transportation for life in the previous case, sentenced Yad Ram also to transportation for life, and declined to make any recommendation for the reduction of the sentence. He was further convicted under Section 147 of the Indian Penal Code and sentenced to two years' rigorous imprisonment, which was to run con-. currently.

3. In this Court a legal objection is taken that the accused having been acquitted by a Magistrate on a charge under Section 302, he could not be tried again on a charge under that section until and unless the previous acquittal under Section 302 had been set aside. It is clear that there is no force whatever in this objection. In the proceedings before the Magistrate in which Yad Ram was acquitted there was no 'trial' of Yad Ram on a charge under Section 302, nor was he 'acquitted' under Section 302. Nor, if the Magistrate had endeavoured to try him and had endeavoured to pass any order of acquittal or conviction under Section 302, would his procedure have been within his jurisdiction. This is such an elementary proposition of law that it is impossible to conceive of any Magistrate regarding himself as 'trying' or attempting to 'try' a charge of murder. We have seen a certified copy of the Magistrate's order and it is perfectly clear that he did what, holding the view that he did of the case (though that view was quite wrong), he was fully entitled to do, i.e., refrained from framing any charge under Section 302, and proceeded to try the accused before him on charges under Sections 325 and 147. We have said that he was legally entitled to abstain from framing a charge under Section 302. We do not for a moment suggest that the facts justified any such self-restraint. We think that no authority is required for the interpretation which we put upon the law, which is, in our opinion, quite obvious. But if authority

be needed it can be looked for in Sheo Narain Singh v. Radha Mohan 53 Ind. Cas. 618 : 42 A. 128 : 20 Cr.L.J. 778 : 17 A.L.J. 1095 : 1 U.P.L.R. (A.) 193 and Krishna Reddi v. Subbamma 24 M. 156 : 2 Weir. 544. There can be no doubt, therefore, in our opinion, that the trial on a charge under Section 302 was in no way contrary to any provision of law.

4. As regards the conviction under Section 147 no objection has been taken before us, but in fact the argument addressed to us in regard to the conviction under Section 302 though it is of no force in regard to Section 302 is a valid argument as regards the conviction under Section 147. In respect of that section there was a charge framed by the Magistrate. There was a trial of the case and there was an acquittal of Yad Ram on that charge, which acquittal has not been set aside by any due process of law.

5. Coming to the facts it is unnecessary to review them in detail. The whole case was examined when the facts regarding the offences for which the other accused were punished were examined in this Court. On that occasion the evidence for the prosecution as to the main facts of the case was accepted. We, of course, have to examine them minutely and have examined every line of it. We see no reason whatever to disbelieve that evidence. There is the evidence of four or five men clearly establishing that Gokul Singh lambardar went to appraise the field of Udmi, that having appraised it in the presence of Udmi he went on to a field of one Chutia about a 100 paces away, that while engaged on that field he and Udmi saw a number of men on the field of Udmi apparently engaged in cutting Udmi's crop. On Udmi going there he was assaulted and Mohan, who was in the close neighbourhood, on going to Udmi's assistance, was assaulted, and he was the man who was killed. On others, including Gokul, Durga and Baldeo arriving, they were in turn assaulted. Mohan was killed and died almost immediately on being taken to his house. Another of the complainants' party, Chutia, who received injuries, died later, his death being probably hastened by the injuries he had received. Others were badly beaten, but we are not really concerned with them in view of the main fact that Mohan was killed practically on the field. We note that Gokul Singh according to the learned Sessions Judge's English record says 'Yad Ram was not one of the first to beat ma but he joined when they thought Mohan

was dead'. We have looked at the evidence in vernacular of the witness and that makes it still more clear that what the witness said was that Yad Ram was engaged in beating Mohan while at first others were beating the witness Gokul Singh, but that when Yad Ram thought that Mohan was done for, then he left Mohan and joined those who were assaulting Gokul Singh. In one respect we think that the evidence is even stronger than the learned Sessions Judge's estimate of it. The Judge has remarked that all the witnesses for the prosecution are reliable and have not been shown to have any such enmity against the appellant as would be likely to lead them to implicate him falsely. But he continues 'the utmost that has been suggested against any one of them is the fact that in a statement before the Police one Daulat Singh did not admit that he witnesses the assault on Mohan, although he named the accused as taking part in the riot. Even if this one witness did not see the assault upon Mohan, it helps the accused very little'.

6. We think that the worst that could possibly be said against Daulat Singh is that he has spoken of seeing the assault on Mohan because in fact from some little distance he saw an assault taking place, and on running up closer to the spot found Mohan unconscious on the ground, and then in fact saw, from a close distance, later stages of the fight. We see no reason whatever to disbelieve the evidence that Yad Ram with his own hand and lathi took a leading part in the assault on Mohan, from injuries committed in the course of which assault Mohan very shortly died. There is not, in our opinion, any doubt that Yad Ram is guilty under Section 302 of the Indian Penal Code in respect of the death of Mohan without any necessity for reference to Section 149 of the Indian Penal Code. In regard to the conviction under Section 147 of the Indian Penal Code we have already given our reason for holding that that conviction should be set aside and we set it aside accordingly. In regard to Section 302 of the Indian Penal Code we maintain the conviction and sentence and dismiss the appeal.