

Emperor Vs. Ram Nath and ors.

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Court : Allahabad

Decided On : Aug-26-1935

Reported in : AIR1935All989; 159Ind.Cas.290

Appellant : Emperor

Respondent : Ram Nath and ors.

Judgement :

Harries, J.

1. The 13 appellants in Criminal Appeal No. 1046 of 1934, were convicted by the learned Assistant Sessions Judge of the Etawah District of an offence under Section 399, Penal Code. The appellant, Ram Nath, was sentenced under that section to a term of six years rigorous imprisonment, the appellant, Khuda Bux was sentenced under that section read with Section 75, Penal Code, to seven years' rigorous imprisonment, whereas the remaining 11 appellants were sentenced under that section each to a term of five years' rigorous imprisonment. The appellants Ram Prasad and Gulzari were also charged with an offence under Section 307, Penal Code. They were found guilty, convicted and sentenced under that section to a term of five years' rigorous imprisonment which was made to run concurrently with the sentence previously referred to which was imposed upon them under Section 399, Penal Code. The appellants, Ram Prasad, Gulzari and Sbiana were further charged with an offence under Section 19(f), Arms Act, and

were found guilty, convicted and sentenced under that section each to a term of one year's rigorous imprisonment. In the case of Ram Prasad and Guilzari this latter sentence of one year was made to run consecutively with the sentences previously imposed upon them, but in the case of Shiamma the sentence under the Arms Act was made to run concurrently with the sentences previously mentioned.

2. Against these convictions each of the appellants has preferred an appeal to this Court, but we are informed that since the appeal was filed Ram Prasad has died. That being so it is unnecessary to consider the evidence in so far as it referred to him and we shall deal only with the case of the remaining 12 appellants. The Local Government being of opinion that the sentences previously referred to were inadequate have applied to this Court for an enhancement of the same and that is the subject-matter of Criminal Revision No. 147 of 1935. The appellants previously referred to were charged with a number of other persons including Kishan Prasad, Ram Charan, Jhamman, Malkhan, Puttu Lal, Sukh Ram and Mahendra, but these seven persons together with two others were found not guilty by the learned Assistant Sessions Judge and acquitted. The Local Government have appealed against the acquittal of these seven named persons alleging that their acquittal was against the weight of evidence and therefore illegal. The Government appeal against the acquittal of Kishan Prasad and the six other named persons is the subject-matter of Criminal Appeal No. 148 of 1935.

3. The charge against the appellants in Criminal Appeal No. 1046 of 1934, and the respondents in Criminal Appeal No. 148 of 1935, was that they together with two others on or about 20th May 1934 had made preparations for committing a dacoity. The facts of the case can be briefly stated as follows:

One Pandit Jagannath Prasad, a Circle Inspector of Bhind in the Gwalior State, became suspicious that the appellant, Ram Nath and others were living in a far better state than their means of livelihood appeared to warrant and that being so he instructed Balwant, a prosecution witness, to get into touch with these persons in order to ascertain how they obtained their money.

4. In consequence Balwant approached Ram Nath and eventually discovered that Ram Nath and others were committing dacoities and were at that time arranging to

commit a dacoity in the Etawah District. Balwant discovered that a dacoity was to be committed in the near future and on 19th May 1934, he conveyed this information to Pandit Jagannath Prasad the Circle Inspector. According to this information it would appear that a party of dacoits had already left for the Etawah District and that the remainder were leaving the Bhind District to join the others at Etawah on the morning of the 20th May. Balwant was instructed by the Circle Inspector to accompany the second party of dacoits and be further communicated with the Etawah police and informed them of what he knew. Arrangements were immediately made to interrupt this second party of dacoits and in the early morning of the 20th May, a number of police officers took up their station at Nagla Gaur which is on the road between the Bhind District and Etawah and there stopped all ekkas and questioned the passengers. In due course an ekka driven by Silbat, prosecution witness No. 5 came along in which were seven passengers including Balwant. This ekka was stopped by the police and the seven persons arrested. Immediately behind this ekka was a second ekka in which one Kashi Ram was riding and this ekka was also stopped and Kashi Ram arrested. Shortly afterwards the Circle Inspector of Bhind Pt. Jagannath Prasad joined the police party and informed them that Balwant was an informer and he was consequently released. The persons arrested were the appellants, Jangi Singh, Darshan Singh, Manpal Singh, Gur Narain, Dwarka, Khuda Bux and Kashi Ram, and they were there and then interrogated on the spot. It appears that Khuda Bux gave the police some information and shortly afterwards a report was made at the Kotwali at Etawah by Munshi Syed Wasi Hasan, Circle Inspector of the Etawah Circle. It appears that Khuda Bux told the police that the appellant, Ram Nath was coming along later in an ekka and a number of constables-were deputed to stop this ekka and effect the arrest of Ram Nath. In due course an ekka containing Ram Nath did come along and Ram Nath was arrested.

5. In the first information report made by the Circle Inspector of the Etawah District he mentions that the six appellants previously named and Kashi Ram had been arrested and that Khuda Bux had made a statement to the police to the effect that Ram Nath was coming along later and that steps had been taken to arrest him. It is further stated in the report that Khuda Bux had informed the police that the party of dacoits which had left the previous night had gone to the house of one Rupa

Ahir in the village of Kunaiya and that it was intended to go to that village immediately to arrest these persons.

6. A police party was immediately organised which left for Kunaiya taking with them the appellant Khuda Bux. The village was surrounded by the police and a house to house search instituted. A number of persons who were pointed out by Khuda Bux as being in this gang of dacoits were arrested and in due course a locked house said to be the house of the appellant Rupa was surrounded. It was apparent that there were persons inside this house, and attempts were made to get into it, but the persons inside resisted by force and a good deal of firing took place between them and the police party. A police constable was wounded and the Superintendent of Police, Mr. Pilditch, also received a slight graze from a bullet. After a time the police were able to get into the house and it was discovered that two of the inmates had been shot dead. The other two persons, viz., Ram Prasad and Gulzari were persuaded to throw down their arms and surrender. It is the case for the prosecution that these four persons inside the house had attempted to murder the police constable who was wounded, hence the charge under section 307, Penal Code, against Ram Prasad and the appellant, Gulzari.

7. In due course Khuda Bux was placed before a Magistrate who recorded his confession. In that confession he makes it clear that the appellant, Ram Nath was the organiser of a very determined band of dacoits and that it had been arranged that a dacoity should be committed in the Etawah District. In order to avoid suspicion a number of dacoits had been sent away on 19th May 1934 and these persons had taken with them six guns. They were to go to the village of Kunaiya and wait at the house of the appellant, Rupa until the arrival of Ram Nath himself with the remainder of the party on the following day. He then stated that on the following morning he proceeded on foot while a number of other dacoits and Balwant proceeded in an ekka from the Bhind District towards Etawah and picked him up on the way as arranged previously. He then describes their arrest by the police at Nagla Gaur and states that he then informed the police that Ram Nath was coming later in an ekka and could be arrested as he was passing Nagla Gaur. He then mentions that he took the police to Kunaiya where he pointed out a number of the dacoits to them. This confession though subsequently retracted if

accepted, abundantly establishes the guilt of Khuda Bux and is also a valuable piece of evidence against Ram Nath and the other appellants whom he actually names. However, it has been urged that this confession should not be accepted, but we see no reason for rejecting it. According to the learned Magistrate, Mr. G.N. Rania, who recorded the confession, Khuda Bux was given ample warning of the consequences of making any incriminating statement, but that after such warning he still desired to make a statement. In the view of the learned Magistrate the statement was voluntary and had not been induced in any way by the police authorities. At the time when the confession was recorded Khuda Bux was not in police custody and we see no reason whatsoever for arriving at a different conclusion from that arrived at by the Assistant Sessions Judge. In his view this confession was a voluntary one and not one made as the result of any inducement or threat held out or offered by the police and that being so, in our view, it was rightly admitted.

8. The appellant, Shiamia, also made a statement to the police and in due course he took a Magistrate to the village of Kunaiya and there pointed out a spot where he said a gun was hidden. It may be observed that when this appellant was arrested a quantity of ammunition was found upon him and therefore he was a person who might well have had the charge of one of the guns. On going to the spot pointed out by Shiamia a gun was discovered. When Ram Prasad and Gulzari surrendered to the police, five guns and a quantity of ammunition were found in Rupa's house and the possession of these guns is the subject-matter of the charge under the Arms Act which was brought against the appellants, Shiamia, Ram Prasad and Gulzari.

9. Later Shiamia was taken before a Magistrate who recorded his confession and in that confession he implicates himself to the hilt. He states that there had been a gathering of the dacoits in Bhind and that an advance party taking six guns with them had gone to Kunaiya to await the arrival of the others. In this confession Shiamia names no one except Bhawai who was one of the persons killed in Rupa's house. The learned Magistrate, Mr. Raima who recorded this confession duly warned the appellant and asked him if anybody had threatened him or induced him to make any statement. The learned Magistrate was satisfied that the

statement which Shama made was voluntary one and that he was not under police influence at the time he made it. The learned Assistant Sessions Judge was satisfied that the confession of Shama was a voluntary one and therefore admissible in evidence against him and with that view we agree. The confession though retracted is very strong evidence against the appellant, Shama, though of course it is not evidence against the other appellants because no reference to them is made in it. However, the confession of Shama clearly establishes that the evidence of the main prosecution witness Balwant is true because as it will be seen Balwant describes the meeting, in the Bhind District and the despatch of the advance party of dacoits with guns to await the arrival of the remainder.

10. Upon investigation it was discovered, that there was no evidence at all against Kashi Ram who had been arrested in an ekka immediately following the ekka in which Balwant and his six companions were travelling and consequently no proceedings were taken against Kashi Ram. A case was instituted however against the 13 appellants and the seven respondents to the Government appeal and two others. As we have stated the 13 appellants were found guilty of various offences, whereas the seven respondents to the Government appeal and the two other persons were acquitted.

11. The main witness for the prosecution, was the informer Balwant who stated that he had been asked by the Circle Inspector of Bhind to keep in touch with Ram Nath. He described how he was informed that a dacoity was to be committed in the Etawah District and the arrangements made to send the dacoits there. There was a meeting of the dacoits at which a number of them armed with six guns were sent away, whereas the rest were instructed to follow in ekkas on the following day. That evening Balwant conveyed this important information to Pt. Jaganmath Prasad, the Circle Inspector, who communicated with the Etawah police. There can be no doubt whatsoever that Balwant did convey the information which he said he did to the Circle inspector at Bhind because the latter at once sent a letter to the police authorities at Etawah mentioning this information and asking them for their co-operation. That letter was produced at the hearing and abundantly corroborated Balwant's statement that he gave the information concerning this arranged dacoity to the police at Bhind. Balwant then described how on the

following morning Ram Nath arranged for Silbat's ekka to take himself and six others to Etawah and how they were arrested on the way. He also mentions that Khuda Bux was not actually in the party when they started from Bhind, but that he was picked up on the way as previously arranged.

12. In order to avoid suspicion Ram Nath arranged to travel shortly afterwards in another ekka. If Balwant's evidence is accepted there can be no doubt that Ram Nath had organised a dacoity and that elaborate preparations had been made for it. Balwant, as will be seen later, named a large number of the appellants and his evidence goes a very long way to establish the charge. Some suggestion has been made that Balwant was on inimical terms with some of the respondents, but there has been no real attempt to establish this. In our view there is no reason whatsoever for rejecting Balwant's evidence and that being so it goes a long way to establish the case for the prosecution. The arrest of Balwant and his companion at Nagla Gaur is deposed to by a number of police witnesses; so also is the arrest of Ram Nath shortly afterwards. The fact that Balwant was found in the company of a number of appellants and that Ram Nath followed in an ekka shortly afterwards is, in our judgment, very strong corroboration of Balwant's evidence and the statement which he made to Pt. Jagannath Prasad on the evening of 19th May 1924.

13. The arrest of the dacoits at Kunaiya and the fight that took place around Rupa's house is described by a number of police witnesses. The description of the behaviour of the dacoits inside Rupa's house establishes beyond doubt that the defenders were men of courage and spirit who were prepared to sell their lives dearly. The arrest of Ram Prasad and Gulzari in Rupa's house is abundantly proved, so also is the recovery of the five guns and ammunition after the arrest.

14. Further the prosecution tendered in evidence the confession of Khuda Bux implicating himself and a number of others and also the confession of Shaima implicating only himself. The Magistrate to whom Shaima pointed out the hiding place in which another gun was discovered was called who abundantly proved that fact.

15. In our judgment the evidence called for the prosecution establishes that a large number of persons had gathered together for the purposes of committing a dacoity and had made elaborate arrangements for the same. We are satisfied that a number of persons heavily armed went off to Kunaiya on 19th May 1934, and that the remainder left the Bhind District on 20th May 1934, to join their companions as arranged to commit this dacoity. The only question remaining therefore is whether or not the Crown had satisfactorily established that the appellants were members of this party who had arranged and prepared a dacoity. It will be convenient to deal shortly with the cases of the individual appellants. (His Lordship after considering the case of each accused separately proceeded with the judgment). In the result therefore we hold that the appellants Ram Nath, Manpal, Bhogi Ram, Dwarka, Gur Narain, Lala Ram, Shiana, Rupa, Darshan Singh, Jangi Singh, Gulzari and Khuda Bux, were properly convicted of an offence under Section 399, Penal Code. We further hold that Gulzari was properly convicted of an offence under Section 307, Penal Code, and that both Gulzari and Shiana were properly convicted of an offence under Section 19(f), Arms Act.

16. In our view the sentences imposed upon the appellants by the learned Assistant Sessions Judge were not adequate. According to the evidence, preparations had undoubtedly been made for a serious dacoity in which any resistance was to be met by overwhelming force. Six guns had actually been distributed amongst the advance party of dacoits, so also a large quantity of ammunition. It is clear that amongst this advance party were men who were prepared to use force and to kill if necessary. When Rupa's house was surrounded, four dacoits kept the police party at bay for sometime and Gulzari and Ram Prasad did not surrender until two dacoits had actually been killed. During this fight a police constable was shot, though fortunately the wound sustained did not prove fatal. The Superintendent of Police also received a slight wound and the appellant Gulzari is fortunate that more serious injury was not caused. The conduct of these dacoits when surrounded in Rupa's house shows that this gang consisted of determined men who were prepared to use unlimited force if necessary to secure their ends. This gang was undoubtedly led by Ram Nath who, according to the evidence, actually produced the guns and distributed them. In our judgment this is as bad a case raider Section 399 as can be imagined

and that being so a sentence of six years' rigorous imprisonment passed on Ram Nath and five years' rigorous imprisonment passed on the others is wholly inadequate.

17. It has been contended, however, that this Court has no power to enhance the sentences passed on these appellants beyond the maximum sentence which could have been imposed upon them by the learned Assistant Sessions Judge. The maximum sentence which can be imposed under Section 399, Penal Code, is ten years' rigorous imprisonment, but by reason of the provisions of Section 31(3), Criminal P.C., the maximum sentence which an Assistant Sessions Judge can pass is one of seven years' rigorous imprisonment. Consequently it is urged that this Court in revision can only enhance the sentences passed to sentences of seven years' rigorous imprisonment and no more.

18. In our judgment there is no force in this contention. The power to enhance a sentence is given to this Court by Section 439(1), Criminal P.C. That sub-section provides that in the case of any proceeding the record of which has been called for by itself or which has been reported for orders, or which otherwise comes to its knowledge, the High Court may, in its discretion, exercise any of the powers conferred on a Court of appeal by Sections 423, 426, 427 and 428 or on a Court by Section 338, and may enhance the sentence. The sub-section standing by itself does not suggest that there is any limitation upon the power of this Court to enhance a sentence other than the limitation imposed by the maximum sentence prescribed for the offence. Prima facie therefore the powers of this Court to enhance sentences does not depend upon the powers which the trial Court may have with regard to sentences. The matter is made abundantly clear by the provisions of Sub-section 3, Section 439 which provides that where the sentence dealt with under Section 439 has been passed by a Magistrate acting otherwise than under Section 34, the Court shall not inflict a greater punishment for the offence which in the opinion of such Court the accused has committed than might have been inflicted for such offence by a Presidency Magistrate or a Magistrate of the First Class. In other words where the case was originally tried by a Magistrate acting otherwise than under Section 34 of the Code, the powers of this Court are limited, but they are not limited if the case was originally tried by a Magistrate

acting under Section 34 of the Code. A Magistrate acting under Section 34 of the Code may impose a sentence not exceeding seven years' rigorous imprisonment and it is to be observed that the words of Section 34 which gives a Magistrate these special powers are precisely similar to the words of Section 31(3) which gives an Assistant Sessions Judge powers to pass a sentence in criminal cases. In our view if there, is no limitation upon the power of this Court to enhance sentences passed by Magistrates acting under Section 34 of the Code, there can also be no limitation on its power in dealing with sentences passed by the Assistant Sessions Judges. In the absence of express words limiting the powers of this Court in cases of sentences passed by Assistant Sessions Judges we are bound to hold that this Court can enhance such sentence up to the maximum sentence prescribed by law for the offence. This view is supported by the reasoning in *Emperor v. Jagat Singh* 1920 Lah. 213, a Single Judge decision of the Lahore High Court. Though the maximum sentence which an Assistant Sessions Judge could pass under Section 399 is seven years' rigorous imprisonment this Court can, in our judgment, enhance the sentence imposed up to the maximum allowed by law, viz., ten years' rigorous imprisonment. As Ram Nath was the ringleader and organiser of his proposed dacoity we are of opinion that the sentence of six years' rigorous imprisonment passed upon him should be substantially enhanced and that being so we enhance it to one of ten years' rigorous imprisonment.

19. The sentence of seven years' rigorous imprisonment passed on Khuda Bux is, in our view, also inadequate. This appellant admitted two previous convictions, one for theft in 1916 and one for a dacoity in 1925 for which he was sentenced to a term of four years' rigorous imprisonment. Section 75, Penal Code, applies to his case and in our view the proper sentence to impose on Khuda Bux is one of ten years' rigorous imprisonment and we enhance his sentence accordingly.

20. The appellant, Gulzari, was properly convicted of offences under Section 399 and Section 307, Penal Code, and Section 19(f), Arms Act, and in our view the sentences imposed upon this appellant were not adequate. We are of opinion that this appellant should also receive a total sentence of ten years and that being so, we direct that the sentences of five years passed upon him under Section 399,

Penal Code, and Section 307, Penal Code, should run consecutively. The sentence of one years' rigorous imprisonment passed upon him under Section 19(f), Arms Act, will run concurrently with the other two consecutive sentences.

21. Shiamma. In our judgment the sentence passed upon the appellant Shiamma is inadequate and we impose a sentence of seven years' rigorous imprisonment under Section 399, Penal Code, and direct that the sentence of one year passed against this appellant under Section 19(f), Arms Act, shall run concurrently with the former sentence.

22. The sentences of the remaining appellants are each enhanced to seven years' rigorous imprisonment under section 399, Penal Code.

23. The appeal on behalf of the Local Government cannot be really pressed. The respondent Kishan Prasad is, we are informed, still absconding, so we cannot consider his case in this judgment. The evidence against the respondents, Ram Charan, Jhamman, Malkhan, Puttu Lal, Sukh Ram and Mahendra is, in our view, quite inadequate to sustain a conviction under Section 399, Penal Code. It is to be observed that Jhamman and Malkhan are residents of Kunaiya the village in question and that being so it is not surprising that they were in the village when it was surrounded by the police. There is some evidence that some of the dacoits were arrested near Malkhan's house, but that in itself is not evidence to convict Malkhan under this section. The respondents Ram Charan, Puttu Lal, Sukh Ram and Mahendra came from other villages and that being so their presence at Kunaiya might be regarded as suspicious, but that in itself is not sufficient to maintain a conviction for making preparations to commit a dacoity. It is to be observed that Balwant mentions none of these respondents; neither Khuda Bax in his confession. In short the only evidence against them is that they were arrested at Kunaiya whilst the police were searching the village for the advance party of dacoits which had left Bhind on 19th May 1934. As we have stated there is some very vague evidence connecting Malkhan with some of the dacoits, but there is little or no evidence against the remainder. In any, event the evidence tendered against these respondents is wholly inadequate to support a charge of making arrangements to commit dacoity. There was some other evidence against Kishan

Prasad, but with that we have no concern. However we think it right to say that the evidence against that respondent is of the slightest and the Local Government may well consider whether or not they should proceed further with the appeal against him.

24. In our judgment the learned Assistant Sessions Judge was abundantly justified in acquitting these appellants and in OUT view there was no other possible course open to him. To have convicted them upon the evidence tendered by the prosecution would have been wholly wrong and we cannot understand why an appeal should have been filed against the acquittal of these appellants. Such an appeal had no reasonable prospect of success.

25. In the result therefore the appeal of the Local Government against the acquittal of Ram Charan, Jhamman, Puttu Lal, Sukh Ram, Malkhan and Mahendra is dismissed. If these respondents or any of them are in custody, they must be released forthwith unless required by the authorities upon any other charge. If any of the respondents are on bail they need not surrender to their bail and their bail bonds are hereby discharged.