

Emperor Vs. Sundar

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Court : Allahabad

Decided On : Mar-20-1920

Reported in : AIR1920All60; 56Ind.Cas.771

Judge : Grimwood Mears, C.J. and ;Rafique, J.

Appellant : Emperor

Respondent : Sundar

Judgement :

Rafique, J.

1. The Appeal No. 176 of 1920 and Revision Application No. 129 of 1920 are consisted inasmuch as they arise out of one trial. Both the appeal and the revision application are on behalf of the Government. It appears that a dacoity was committed at the house of one Khiali Ram, a Brahman, at the village of Amarpur, on the night of the 4th of February 1919. More than 20 persons, armed with guns, pistols, swords, spears and lathis, raided the house of Khiali Ram and that of his nephew Din Dayal and maltreated the in-mates of the two houses in order to find out from them where they had buried their treasure. The dacoits burnt Din Dayal's hands with a torch and get fire to his wife's skirt which resulted in her leg and hand being slightly burnt. They brutally ill treated the daughters of Khiali. All the women of the two houses were stripped of their ornaments and the two houses were ransacked entirely. The dacoits kept off the villagers by firing off guns from time to

time. They remained in the houses of Khiali and Din Dayal for more than an hour. Immediately after the departure of the dacoits the Chowkidar of the village ran to the Mainpuri Police Station, a distance of about four miles from Amarpura, and reported the occurrence. The first report was made at 6 A.M. Sheo Shunker Lal, the second officer at the Kotwali, promptly proceeded to the scene and arrived there at 7 a.m. He took with him Ajudhia Prasad, a neighbouring Zamindar. On arrival at Amarpur and after an inspection of the house of Khiali, the Sub-Inspector traced the footsteps of the dacoits for a considerable distance and at a spot a mile and a half from the village found several articles which had been accidentally dropped by the dacoits. One of these articles was a piece of paper which subsequently turned out to be a jail release ticket. The Police continued the investigation when on the 15th of February, the senior Sub-Inspector Irtaza Husain took it up. He went on the clue supplied by the jail release ticket and after enquiry at the jail found that it belonged to one Narain, who had been released on the 13th of April 1917 after undergoing a year's sentence of imprisonment under Section 110 of the Code of Criminal Procedure. In fact the jail register showed that Narain was the only prisoner released on the 13th of April 1917. Irtaza Husain at once proceeded to the village of Narain and arrested him and got from him information which led to the arrest of Radha Brahman. Radha gave more detailed information which led to the arrest of several persons. Radha turned an approver. On the materials thus collected the Police sent up several men to the Magistrate for trial on a charge of dacoity, six of whom were committed by the Magistrate to the Court of Session. It was stated then that 4 or more of the dacoits were absconding and could not be traced. Their names were known to the Police on the authority of Radha. The learned Sessions Judge of Mainpuri, Mr. Kisch, after hearing the evidence for both sides, convicted the accused before him of participation in the dacoity at the house of Khiali and sentenced them on the 10th of May 1919 to transportation for life. The appeals of the prisoners to this Court were duly heard and rejected. Subsequently two other men were arrested by the Police, namely, Sukhi and Sardar, and were put up before a Magistrate on the charge of dacoity. Radha, the approver, and some other persons were examined, and the Magistrate committed Sukhi and Sardar to take their trial before the, Sessions Court. Immediately after the committal of Sukhi and Sardar a third person was arrested,

namely, Sundar. He was also challaned before the Magistrate, who after hearing some of the witnesses committed him also to the Court of Session., The learned Sessions Judge of Mainpuri, not Mr. Kisch. who had been transferred from the district, tried all the three men-together, namely Sukhi, Sardar and Sundar; he convicted the first two and sentenced them to seven years' rigorous imprisonment. He acquitted Sundar, holding that the evidence for the prosecution had not brought; the charge home to Sundar. The Government has appealed from the acquittal of Sundar and has filed a revision with regard to the sentences passed on Sukhi and Sardar.

2. I shall dispose of both the appeal and the revision application by one judgment. The revision application may be disposed of with a few words. No one appears on behalf of Sukhi and Sardar to show cause. The learned Sessions Judge has found, and I think correctly on the evidence in the case, that Sakhi and Sardar were guilty and that they did take part in the dacoity on the night of the 4th of February 1919. The dacoity, as I have mentioned already in the opening part of this judgment, was attended with brutal treatment of the inmates of the houses and was not an ordinary dacoity. The persons who participated in that dacoity do not deserve any consideration of leniency. It is unintelligible to me how the learned Sessions Judge, who tried Sukhi and Sardar, came to sentence them only to seven years' rigorous imprisonment without any attempt to make a distinction between their offence and that of their comrades, who were tried, convicted and sentenced by Mr. Kisch. In fact the present learned Judge does not even refer to the former trial. In my opinion it is highly reprehensible that men who are guilty of such brutal crimes as the dacoits who raided the houses of Khiali and illtreated the inmates of his household should be, after being found guilty, treated with leniency. To my mind the judgment of the learned Judge is highly unsatisfactory. It is a sketchy judgment and does not set out the facts or the reasoning in a manner that is required in a judgment of Sessions trials. In my opinion the sentences on Sukhi and Sardar should be the same as those that were passed against their comrades in the former trial, namely, transportation for life. I would, therefore, sentence both of them to transportation for life.

3. As to the case of Sundar I have read the whole evidence in the case with great care and have heard the learned Counsel on his behalf. I regret to say that the impression left on my mind by the record of the evidence taken by the learned Judge is that he has not paid that attention to the recording of evidence which is required in a case of importance like that of a dacoity with torture or with murder. The evidence leaves the impression on one's mind of having been recorded hastily, and there is no connection or system as to how one statement leads to another. The judgment, as far as it concerns Sundar, is really in a few sentences and is highly unsatisfactory. Now the evidence against Sundar consists of the statements of three persons, namely, Khiali, Radha and Bhikam. Khiali is the man at whose house the dacoity was committed. He says that he saw Sundar among the dacoits and that it was Sundar who was in a room tying up a ' bundle of clothes. Radha, the approver, mentioned Sundar in his first statement, recorded on the 21st of February 1919, and adhered to that statement throughout.' Radha has made five statements and in all those five statements he has mentioned the name of Sundar. In fact if Radha is to be believed, Sundar was not an unimportant member of the gang. It was at the field of Sundar that the members of the gang met in the evening of the night of the dacoity. It is true that Radha says that he did not see Sundar in the room tying up a bundle of clothes; and upon the difference in the statements of the two men (namely Khiali and Radha) as to the tying up of a bundle of clothes by Sundar the learned Judge rejects the evidence of both ' Khiali and Radha. I am not prepared to agree with the learned Judge that the said difference in the two, statements is such as to discredit the two witnesses entirely. It seems to me that Radha himself must have been busy in looting and getting property and had no time to think or see what his other comrades were doing. In fact this reason by itself is sufficient to explain the apparent discrepancy. Bhikam is the Mukhia of the village of Sundar. He swears that he saw a number of people at the field of Sundar about 6 in the evening of the 4th of February 1919. The learned Judge discards his evidence on the ground that Bhikam Singh made the statement under pressure of the Police. I have examined the statement of Bhikam Singh and I cannot find anything in it to show that he was persuaded by the Police to make a false statement. It is highly unlikely that Bhikam Singh would implicate an innocent man of his own village at the instance of the Police when there was no

enmity between him and that man. I think the depositions of Khiali, Radha and Bhikam Singh are worthy of credit and they prove beyond a reasonable doubt that Sundar took part in the dacoity on the night of the 4th of February 1919 at the house of Khiali.

4. Before concluding the judgment I would also draw the attention of the learned Judge to an omission in the trial of the case. Khiali stated on oath that he had been taken to the jail and identified Sundar from among seven other under-trial prisoners. There are Police papers on the record to show that jail identification was demanded. The Committing Magistrate, it seems, forgot to send up the Deputy Magistrate before whom the identification of Sundar took place. But it was the duty of the learned Judge to have called that evidence before the conclusion of the trial. However, the omission to do so does not, in my opinion, weaken the case against Sundar or throw any doubt upon his guilt. I would, therefore, convict him and sentence him to transportation for life.

Mears, C.J.

5. I agree that the appeal of the Government in the case of Sundar must be allowed and I also agree that the appropriate sentence is transportation for life.

6. As regards the other two men who were sentenced to seven years' rigorous imprisonment, I am also in agreement that the application for enhancement of sentence must be allowed and those men be sentenced to transportation for life.

7. The reasons why Mr. Justice Rafique and I have given separate judgments in this case is that both of us were dissatisfied with the way in which the learned Sessions Judge had dealt with the cases. To me it seemed to show a lack of thought and a lack of care and failure to appreciate how grave was the matter that was before him. But I thought it better that the substantial criticism should proceed from a Judge who has had a wide experience of the administration of criminal work here and knowledge of the procedure of the Courts in this country. For this reason I thought it better that Justice Rafique should be asked to pronounce the principal judgment whilst I pronounce the second judgment though I am entirely in accord with what he has said.

8. The order of the Court is that the appeal of the Government as against Sundar be allowed. Sundar is convicted under Section 395 of the Indian Penal Code and is sentenced under Section 397 to transportation for life.

9. In the case of Sukhi and Sardar we direct that they be sentenced under Section 397 of the Indian Penal Code to transportation for life, the period to run from the date from which they are undergoing the sentence of seven years' rigorous imprisonment.

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