

Karam Singh Vs. State

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Court : Himachal Pradesh

Decided On : Jul-03-1950

Reported in : AIR1951HP19

Judge : Bannerji, C.J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 367 and 423; ;
[Evidence Act, 1872](#) - Section 24

Appeal No. : Criminal Appeal No. 17 of 1949

Appellant : Karam Singh

Respondent : State

Advocate for Def. : Bakshi Sita Ram, Adv.

Advocate for Pet/Ap. : Y.S. Parmar, Adv.

Disposition : Appeal allowed

Judgement :

Bannerji, J.

1. The appellant, Karam Singh, and his brother, lambardar Lehna Singh, were sent up for trial before the Additional Sessions Judge under the following charges; namely, Section 120-B; Sections 302, 447, 364, 436 and 896, Penal Code, read

with Section 149, Penal Code.

2. The assessors were of opinion that the appellant, Karam Singh, had committed no crime and they unanimously declared him innocent. Agreeing with the views of the assessors, the learned Judge acquitted the appellant of the five charges but disagreeing with the views of the assessors, he convicted the appellant under Section 302, read with Section 34, Penal Code, for the murder of Habib. The original charge was as follows:

'That on 31st Bhadon Section 2004 B. you, in order to achieve the aforesaid common object, formed an unlawful assembly with the accused Karam Singh and other persons mentioned above, and while the rest with the guna, swords, etc., were sent down by you to Sandur, you along with your brother Karam Singh accused sat at Ball nearby, and there two members of this unlawful assembly viz., Salig Ram and Amar Singh s/o Ganga, murdered Habib Khan by gun-shots in your presence and at your abetment, and you thereby committed the offence punishable under Section 302/149, Penal Code, cognizable by this Court.'

3. Following the authority of Sheoram v. Emperor, A. I. R. (35) 1948 ALL. 162; (49 Cr. L. J. 129), the learned Judge convicted the appellant under Section 302, read with Section 34, Penal Code.

4. It may be mentioned here that the appellant has not challenged his conviction by altering the charge from Section 302, read with Section 149, Penal Code, to Section 302, read with Section 84, Penal Code.

5. The facts of the case have been sufficiently stated in the judgment. For the purpose of this appeal, only such facts as are relevant and which directly relate to the offence of which the appellant has been found guilty, are briefly narrated here.

6. On 31st Bhadon, 2004, corresponding to the middle of September 1947, the Fendels of the village, Sandur, in Rampur (Bushahr), found themselves surrounded by villagers of Shekhal, armed with deadly weapons. These Fendels were Christians but they had marital ties with such Kohlis (in those days treated as low-caste Hindus) who were converted to Christianity. One of their daughters was

married to a Muslim, called Habib. He was a 'thekedar' (contractor) and had a wooden hut, adjoining the Fendels' house. These raiders had disarmed the Fendels and after having given them assurance that they need not fear their lives and that they would be taken care of, they proceeded to threaten Habib. But upon intercession by the Fendels, they let him go. Habib took the path, which proceeded along the bank of the river towards: Shakra in order to reach Keonthal territory. There is an upper path from the Fendels house that leads to Samta's kiar and passes through Bali and meets the lower path at Shakra. From Shakra, one path goes to village Shekhal and the other to Laasa and Chamsu-kbud on the border of the Keonthal territory.

7. The prosecution case is that as soon as Habib left along the lower path, he was followed by two gunmen, Salig Ram and Amar Singh. .. Habib met Khoin Ram at the junction of the two roads at Shakra, when he fell at his feet and asked for protection. Khoin Ram advised him to go back to Lehna Singh, lambardar of the village, Shekhal, who was, at that time, at Samta's kiar. Habib, accordingly, took the upper path from Shakra and retraced his footsteps to Samta's kiar via Bali, Samta's kiar could be seen from the Fendels' bungalow. There is a distance of about two hundred and fifty yards between Samta's kiar, where lambardar, Lehna Singh, was seated and Shakra, where Habib was met by Khoin Ram. It appears they form a triangle, Shakra being the apex and one arm being the lower path and the other being the upper path via Bali, and the base being the two points, known as Fendels house and Samta's kiar. The prosecution proceeded to allege that Habib came to Samta's kiar and fell down at the feet of Lehna Singh, lambardar, and Karam Singh, the appellant. He was advised to conceal himself behind a bush. When the gunmen arrived, Lehna Singh and Karam Singh pointed out the bush behind which Habib was hiding. Habib was shot dead by two shots from the gunmen, These two killers then returned to Fendels bungalow and told the story to their co-culprits how they killed Habib. This story was over-heard by the prosecution witnesses, Rajji, P. W. 1, Mt. Juni, P. W. 2 and Mt. Churi, P. W. 4. Soon afterwards, the Fendels were taken against their wishes from their bungalow to Shakra along the upper path, that is, via Samta's kiar and Bali. When they were being so taken, it is alleged by the prosecution, that they saw the dead body of Habib lying on the open ground at Bali. This, in effect, is the gist of the prosecution

case against the appellant, who had been convicted under Section 302, read with Section 34, Penal Code and sentenced to transportation for life.

8. It may be stated here that the Fendels, who had been told that they would be taken to Shekhal for protection, were taken to Lassa and finally, to Chamsu kbud. While crossing it, they were set upon by some of their escorts and killed. Rajji, P. W. 1, a son of T. T. Fendel, managed to escape. The lives of Juni, wife of Obarli Fendel, brother of T, T. Fendel and of Churi wife of Totu Fendel, eldest eon of T. T, Fendel, were saved on account of the direct intervention of the Kohlia, their relatives. Finally, Mt. Juni, P. W. 2, managed to reach Jharak. She gave information to one Salig Ram, lambardar. Investigation was, later on, commended and all the persons implicated in the crime were sent up for trial, under various charges, excepting lambardar Lehna Singh and the present appellant, who were sent up for trial subsequently.

9. The case against the present appellant, Karam Singh, was commenced on 12th August 1918. Lambardar, Lehna Singh, died during the pendency of the trial.

10. The defence of lambardar, Lehna Singh and the appellant, Karam Singh, was that they were not present at the time of the occurrence.

11. The learned counsel for the appellant drew the attention of this Court to the evidence of Rajji, P. W. 1, Mt. Juni, P. W. 2 and Mt. Churi, P. W. 4, upon which the conviction has been solely baaed. According to his contention, the learned Additional Sessions Judge found that there was no conspiracy proved by the prosecution. Hence Section 10, Evidence Act cannot be made applicable in order to let in that evidence, the acceptance of which had led the trial Court to convict the appellant, Karam Singh.

12. In discussing the evidence of conspiracy, the learned Additional Sessions Judge observed as follows :

'The two facts that Karam Singh, Gulab Singh and Eitab Singh live as members of one family and that Karam Singh was present at Samta's kiar on the day of occurrence cannot establish the charge of conspiracy against the accused. They

are unconnected and isolated facts, They do not establish any common design or agreement between the accused and the Shekhalwalas.

The learned Public Prosecutor argued that for proving the existence of the conspiracy, the declarations and acts of the other conspirators may be received in evidence under Section 10, Evidence Act. Section 10 is not applicable to the present case. Section 10 says, 'where there is reasonable ground to believe that two or more persons have conspired together to commit an offence or any actionable wrong, anything said, done, or written by any one of such persons in reference to their common intention, after the time when such intention was first entertained by any one of them, is a relevant fact as against each of the persons believed to be so conspiring, as well for the purpose of proving the existence of conspiracy as for the purpose of showing that any such person was a party to it.' The section clearly lays down that it is necessary to show that there are reasonable grounds to believe that the accused and the persons whose acts and statements are intended to be given in evidence were members of a conspiracy. Then and then alone, those acts and statements will be received in evidence. In the absence of a prima facie proof of conspiracy, and the accused's connection with it, such acts and statements are not admissible in evidence. A prima facie proof does not exist in the present case. The statements and the acts of other persons cannot be used against the accused. Such evidence, if admitted, can be rejected at a later stage if the reasonable ground of belief is displaced : vide H. H. B. Gill v. The King, A. I. R. (35) 1948 P. C. 128: (49 Cr. L. J. 503) :

The charge of conspiracy, levelled against the accused Karam Singh, fails.'

13. The learned counsel for the State argues that the incident must be seen on a broader background of the conspiracy to kill the Fendels, take forcible possession of their lands and kill the Muslim. Habib. He contends that Lambardar, Lehna Singh, was the ring-leader and arch-conspirator. The appellant, Karam Singh, is his brother and lives jointly with him. The appellant's son, Kitab Singh, is one who took active part in the crime.

14. In order to find out the complicity of the appellant in the crime of which he has been convicted, it is not necessary to refer to the evidence of other crimes of

which the appellant has been acquitted. The evidence relevant to the particular crime with which he has been charged and of which he has been found guilty need alone be examined. For this purpose, it will be necessary to examine the testimony of the principal prosecution witnesses. (His Lord-ship after examining such testimony proceeded:)

15-18. In the circumstances, I cannot but feel that this is a fit case where the benefit of doubt could be claimed by the appellant.

19. I need not discuss the points of law urged by counsel for State for the facts are such that cast grave suspicion on the evidence of prosecution witnesses, who overheard the story. I do not wish to express any opinion, whether Section 6, Evidence Act can be invoked in order to save the prosecution from the necessity of producing that evidence, the absence of which appears to be fatal to the prosecution. Salig Bam and Amar Singh have already been convicted. Not one of these, who listened to the story of Salig Bam and Amar Singh, regarding the killing of Habib has been produced. Khoin Ram's evidence would alone have resolved the doubt. But his evidence is not forthcoming.

20. Though a Court ought, and no doubt, will take into consideration the absence of witnesses whose testimony would be expected, it must judge the evidence as a whole and arrive at its conclusion accordingly, taking into consideration the persuasiveness of the testimony given in the light of such criticism as may be levelled at the absence of possible witnesses. See *Adel Muhammed v. Attorney-General of Palestine*, A.I.R. (32) 1945 P. C. 42 : (46 Cr, L, J. 394) and *Malak Khan v. Emperor*, A.I.R. (33) 1946 P. C. 16 : (47 Cr. L- J. 489).

21. The appellant challenges the non-production of Khoin Bam and suggests that the prosecution has been influenced by some oblique motive.

22. So far as the charge of Section 303, read with Section 34, Fenal Code is concerned, the prosecution relies upon the evidence of three witnesses, Bajji, Mt. Juni and Mt. Ohuri, who, according to the prosecution, were in the vicinity of those to whom the two gunmen were relating the story of the killing of Habib. They overheard the story. Their evidence alone cannot be substantive evidence for the

purpose of conviction. At best, it can be corroborative and in a serious charge like this, the conviction cannot be founded solely on the evidence of three persons who overheard the story, when none of these persons for whom the story was meant, have come forward to support it. The opinions of the High Courts in India which have varied from the total rejection of such extra-judicial confession to the receiving of it with great caution, are illustrated by the following authorities: *Desraj v. Emperor*, A.I.R. (15) 1928 Lah. 658: 29 Cr. L. J. 865, *Ramzan v. Emperor*, 157 I. C. 1054 (Lah) and *Emperor v. Mt. Jagia*, A I.R. (25) 1938 Pat. 303 : (39 Cr. L. J. 428).

23. The declarations of the two gunmen, though original evidence, are no proof of the truth of the facts stated, the existence of which must be established independently. I am supported in this view by the decisions of the House of Lords in *R. v. Christie*, 1914 A. C. 545 at P. 553.

24. Further, the extra-judicial confession of Salig Earn and Amar Singh, the two gunmen, overheard by the three prosecution witnesses, has been accepted for being used against Lehna Singh (deceased) and Karam Singh, who, in ordinary circumstances, should have been a co-accused. In a joint trial, there might have been some justification in using the extra-judicial confession but in this trial, the force of the admission, amounting to extra-judicial confession, appears to have been totally spent.

25. I finally close with the oft-quoted observation of Foster J. :

'Proof may be too easily procured; words are often misreported--whether through ignorance, inattention or malice, it mattereth not to the defendant, he is equally affected in either case and they are extremely liable to misconstruction; and withal, this evidence is not in the ordinary course of things to be disproved by that sort of negative evidence by which the proof of plain facts may be, and often is, confronted.' (Foster C. L. 243).

26. It is not denied that these prosecution witnesses are angry victims, having suffered irreparable wrong at the hands of the co-villagers of the appellant, their evidence alone cannot, in the absence of other independent evidence, form the

basis of conviction. In *Harold, White v. King*, A.I.R. (32) 1945 P. C. 181: (47 Cr. L. J. 575), their Lordships of the Privy Council laid down the following rule :

'The jury should be warned that it would be dangerous to the extreme to act on a confession put into the mouth of the accused by a witness having a strong motive for implicating some one else in the murder and uncorroborated from any other source.'

27. In the circumstances, in my judgment, the prosecution has failed to prove, beyond all reasonable doubt, the offence with which the appellant has been charged.

28. I, therefore, hold that it is very doubtful if either Lehna Singh or Karam Singh took a hand in the murder of Habib, whose dead body was found at Bali, at some distance from Samta's Kiar. I would, therefore, allow the appeal, set aside the conviction and sentence passed on the appellant and acquit him. He need not surrender to his bail as his bail bonds are directed to be cancelled.

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