

ALLAHABAD HIGH COURT

Ram Naresh

Vs

Emperor

(Allsop, J.)

15.12.1938

JUDGMENT

Allsop, J.

1. The appellants Ram Naresh, Jagan, Bissu, Banarsi and Barku have been sentenced each to rigorous imprisonment for a period of two years under Section 147, I.P.C. for rioting, to rigorous imprisonment for a period of ten years under Section 307, I.P.C. for attempting to commit murder, and to rigorous imprisonment for a period of ten years under Section 326, I.P.C. for causing grievous injury by means of a corrosive substance. The case for the prosecution is that Ramji Das was walking up some steps from the edge of the river at Benares when he was surrounded by the-appellants who threw nitric acid over him and caused very serious injuries. That an attack of this nature was made upon Ramji Das admits of no doubt. A number of witnesses have been called to prove it and there is medical evidence that he was badly burnt with acid. The Civil Surgeon was summoned almost immediately and has described the injuries. It appears that Ramji Das was in serious danger of his life at one time. He has been permanently disfigured. He has lost one ear and one eye and is scarred over one side of the face and all over his body. The only question is. whether the appellants are the people who made the attack and caused these injuries. If they are guilty, the sentences passed' upon them are by no means too severe.

2. The oral evidence consists of the statements of Ramji and four witnesses Basdeo, Parmeshwar Verma, Paresh Nath and Sakaldip who depose that they either recognized the appellants or were able afterwards to identify them in jail. It is admitted that the attack took place after dark and one general argument is that it would have been impossible for the-witnesses to recognize or identify Ramji's assailants. The reply to this argument is. that the attack took place just under an electric street lamp. It has been argued on behalf of the appellants that it is unlikely that the attack would have been made at this particular place. The learned Judge has discussed the matter and has come to the conclusion that there is no reason to disbelieve the statements made by the witnesses upon this point. The Sub-Inspector of Police who went to the place two on three hours afterwards found marks of acid there. I agree with the finding of the learned Sessions Judge and I need only add one point, namely that Ramji's assailants would probably choose a place which was not quite dark because it would be necessary for them to be certain that they were attacking the right man.

3. The appellants have not been able to suggest any good reason why Basdeo, Par. meshwar Verma and Paras Nath should perjure themselves to implicate them. Basdeo is a tirath purohit or panda as Ramji is, but no special connexion between them has been suggested in cross-examination. In reply to a question put by counsel for the appellants the witness said that he was a beggar and could give no idea of his income. Considering his profession, that of acting as a priest for pilgrims visiting the city, I do not think that he can be described as a man of no means or that there is any sufficient reason for disbelieving him merely because he lives on alms. Parmeshwar Verma is a Madrasi who had been living in Benares for about three years before he gave evidence. He makes his living by selling dhoop battis, which I understand are lamps of some kind used for burning incense. He admits that his income is very small, but that is no reason for disbelieving him. It was suggested in cross-examination that he was a servant of Ramji's, but he denied this allegation. He admits that pilgrims upon whom Ramji attends buy his wares from him, but that again is no reason why he should give evidence against the appellants.

4. Paras Nath is a priest attached to a temple. No reason has been suggested in cross-examination why this man should be prejudiced against the appellants or in favour of Ramji. He was asked whether there was a temple near Ramji's house. He said there was. He was then asked whether he officiated in that temple and he said he did not. The intention apparently was to suggest that this man was a neighbour of Ramji's, but even if he was, that is no sufficient reason for disbelieving his evidence.

5. There remains the evidence of Sakaldip. He implicated all the appellants in his statement in the committing Court and in the course of his examination-in-chief in the Sessions Court. In his cross-examination in the latter Court he was shown a letter, Ex. T, which he admitted that he had written to a youth called Gauri Shankar. It would appear that Gauri Shankar had spoken to him about his evidence against Banarsi Lal. The letter was written in order to make an appointment between Saksildip and Gauri Shankar. In the course of it Sakaldip explained that he was in a very difficult position because he was working as a tutor to the sons of Hira Lal, a brother of Ramji's, and because pressure had been brought upon him to give evidence. He said in the letter that Banarsi was not guilty. There was no mention of this letter in the cross-examination of the witness in the Court of the Magistrate. It may, of course, be that the defence thought they would reserve this piece of evidence till the last moment, but the failure to mention the letter does give rise to a suspicion that it may not have been in existence at that time. The learned Sessions Judge has pointed out that there are other reasons for suspecting that this document is not genuine in the sense that it was not written at the time when it was supposed to be written. If Gauri Shankar and SakaL dip were going to meet in order to discuss the situation it was not necessary for Sakaldip to mention in the letter that he was employed by Hira Lal or that Banarsi was innocent. The learned Judge has pointed out that it would be somewhat unwise for Sakaldip if he intended to give false evidence to disclose the fact in a letter written in his own hand-writing. The offence was committed in November 1937. There is on the record a complaint purporting to be made by Sakaldip on 19th February 1938. That was a complaint against Jagan, Barku and Banarsi, appellants, and a man called Bishun. It alleged that they had threatened Sakaldip because he was one of the witnesses against them. When Sakaldip was examined in the Sessions Court this report was overlooked and was not put to him. The result is that the Sessions Judge attempted to secure his attendance on an other date, but the man had disappeared and could not be found.

6. I have no confidence that the letter written by Sakaldip was genuine. He said in his cross-

examination in the Court of Session that Banarsi was not guilty, but that is not a statement upon which I would place any reliance. Sakaldip was sent to an identification parade to identify Banarsi. He did identify him, but before he appeared, Banarsi told the Magistrate who was conducting the proceedings that Sakaldip was a particular friend of his. It is no doubt true, as the learned Sessions Judge has said, that Sakaldip was not a reliable witness, but the statements he made about Banarsi are no good reasons for doubting the evidence of the other witnesses against this man, especially as the subsequent conduct of Banarsi affords some corroboration of the evidence of these witnesses.

7. On 25th November 1937, the offence against Ramji having been committed on the 16th, Banarsi Lal wrote a letter to the Sub-Inspector of the Dasaswamedh police station in Benares. The letter was written from the hospital at a place called Bhelupur. Banarsi Lal stated in the letter that he had been attacked by a number of people including Hira Lal at about 7 o'clock on 16th November and that he was in hospital on account of the injuries which he had received. The offence against Ramji was committed in the Dasaswamedh police circle. Banarsi Lal has not attempted to produce any evidence from the hospital to show when he entered it or to establish an alibi. It seems however that his letter to the Sub-Inspector was written with the object of establishing his innocence in connexion with the offence against Ramji. The Sub-Inspector has deposed that the doctor told him that Banarsi had been admitted to the hospital on 18th November. This hearsay evidence does not, of course, prove in fact that Banarsi did enter the hospital on that date but it suggests a reason why no evidence has been produced from the hospital by way of defence in this case. The action of Banarsi Lal in writing this letter does not, of course, prove that he took part in the offence but it certainly tends to corroborate the direct evidence against him.

8. The natural reaction of Ramji who had been so seriously injured would be to mention the names of these who had, in fact, taken part in the attack upon him. I have explained that there is no personal reason for doubting the evidence of Paras Nath, Basdeo and Parmeshwar. The appellants have relied very strongly upon a report made by Hira Lal, brother of Ramji, at the police station at 6.30 P.M. on 16th November. In this report Hira Lal said that Ramji had told him that he had been attacked by Mathra, Barku and a number of other servants of Janki Ram Joshi. The prosecution have alleged that the attack on Ramji arose out of the ill-feeling between him and Janki Ram. It appears that they were rival pandas and that there has been rivalry and enmity between them for a number of years. A previous attack had been made upon Ramji and that led to the conviction of Janki Ram and others including Chhotu who is a brother of Barku. Barku himself was tried but was acquitted. It seems that the persons then convicted were on bail pending their appeal in this Court. The appeals of Chhotu and others were dismissed and orders were issued that they should surrender and serve out their sentences. The others surrendered or were arrested but Chhotu remained at large. It is said that Ramji saw this man going about in Benares and was afraid that he would attack him. He therefore made a report of the fact to the police and got Chhotu arrested. It is alleged that this is the reason why he was attacked on 16th November.

9. These facts explain why Janki Ram Joshi was mentioned in Hira Lal's report. The argument on behalf of the appellants other than Barku is that they cannot be guilty because they were not mentioned in the report. It is suggested that they were not recognized at the time and that their names were afterwards taken for other reasons, i.e. enmity or suspicion.

10. I should like to mention that the report in itself does not seem to me to be admissible as evidence in the case. It is after all only a statement made out of Court by Hira Lal to the clerk at the police station. As a general rule, I think Magistrates and Judges should be quite clear when they make use of these first information reports that they are admissible in evidence. Statements made in these reports are admissible; under Section 155 to impeach the credit of a witness who made them or under Section 157 to corroborate the testimony of the witnesses who made them if the reports were made about the time when the fact took place or before any authority legally competent to investigate the fact. It may be that there are other Sections of the Evidence Act under which these statements may in certain circumstances become relevant, but there can be no doubt that they are not substantive evidence in the case and Courts should be clear about the relevancy of the statements before they use them.

12. I mention this matter in a general way, but it is not of any importance in the present case because Hira Lal and the other witnesses, including Ramji himself, have said that Ramji did mention only Mathra and Barku and the servants of Janki Ram when he spoke to Hira Lal immediately after the offence was committed. Hira Lal was at the house of Ramji which is only a very short distance from the scene of the occurrence. He heard the cries and ran to the place. He asked Ramji what had happened and then went straight to the police station to make the report. On the way he passed the house of Ramji and called out to these who were in it to attend to Ramji and to send for medical assistance. The question then is whether the evidence of Ramji and the other prosecution witnesses should be disbelieved because only the name of Barku among the appellants was mentioned by Hira at the police station in his report.

13. In my judgment there is no reason at all why the evidence should be disbelieved on this ground. It must be remembered that Ramji must have been in very great pain at the time and that the attention of all these who came upon the scene was attracted rather to him and his injuries and to the general fact of the attack upon him than to the names of the individual offenders. If Ramji had made a considered statement to Hira Lal in the presence of the other witnesses and had not given the names of the appellants other than Barku there might have been ground for thinking that these other appellants had not been recognized. In the circumstances, as they were, it was natural that Ramji should make only a general statement to explain what had happened to him.

14. Hira Lal mentioned in his report that Basdeo, Bijai Ram, some Madrasis and a Panditji had come upon the scene. Basdeo is the witness who has been produced and it is said that the Panditji is Paras Nath. There is no reason for doubting the statement. Parmeshwar Verma is, as I have already said, a Madrasi. Hira Lal has said in his evidence, in the Sessions Court that these people were on the scene and that statement can be and is corroborated by the statement he made to the police. It appears that the presence of Basdeo, Parmeshwar Verma and the Panditji was not alleged as an after thought and this fact goes some way to corroborate their evidence. If the oral evidence stood alone, I am of opinion that it would be sufficient to justify the conviction of the appellants, but as against some of them, there is other evidence. I have already mentioned the subsequent conduct of Banarsi. I must now refer to the fact that Jagan gave himself up to a Magistrate on 22nd November. He was sent to jail where he was examined by the doctor. This doctor has deposed that he had several acid burns on his person. The learned Judge says that he attached very little importance to this point, but it seems to me to be one which cannot be

ignored. It is true that no specific question was put to Jagan by the learned Judge in order to enable him to explain the existence of these injuries, but Jagan was asked whether he had anything further to say about the evidence against him and it is a fact that he offered no explanation at all of these injuries. It would have been better if he had been asked specifically about them, but he did have an opportunity for explanation and he did not take it. Learned Counsel who has argued the appeal on his behalf was not able at the time of arguments to proffer any explanation. In view of the nature of the charge I think the fact that Jagan had acid burns on his body is certainly a fact which tends to corroborate the other evidence against him.

15. Jagan and Bissu gave themselves up together. They apparently went into the Magistrate's Court and asked that they should be arrested and sent to jail so that they should not fall into the hands of the police. No evidence has been produced to show exactly what happened on that occasion, but a witness called Pearey Mohan has stated that he is a petition writer attached to the Collector's Court, that the Magistrate sent for him, that he went into the Court and found Bissu and Jagan in the dock and that Bissu and Jagan dictated an application to him which they signed. That application has been produced as evidence and in it Jagan and Bissu certainly stated that they were guilty of the offence of throwing acid upon Ramji. They said in the application that the police were friendly with Ramji and that they did not wish to fall into the hands of the police. The two men say that they did not understand what was in the application. They say that they were led to suppose that it was an application for bail and that on that understanding they signed it. They have been contradicted upon this point by Pearey Mohan and I have no doubt that his evidence is true, that the application was made and that these two appellants signed it with full knowledge of its contents. The learned Judge is of the same opinion but he has rejected the document as being irrelevant upon the ground that it would be against public policy to admit such documents, because if they were admitted they would enable these who wished to make confessions or who wished to have confessions recorded to evade the provisions of Sections 164 and 364, Criminal P.C.

16. I think Courts should be very careful in rejecting evidence which is relevant under the Evidence Act merely because of provisions in the Code of Criminal Procedure. Section 1 of that Code is as follows:

(1) This Act may be called the Code of Criminal Procedure, 1898, and it shall come into force on 1st July 1898. (2) It extends to the whole of British India; but, in the absence of any specific provision to the contrary nothing herein contained shall affect any special or local law now in force....

17. The term "special law" is not defined in the Code of Criminal Procedure, but Section 4 of that Code says that all words and expressions used therein and defined in the penal Code and not defined in the Code of Criminal Procedure shall have the meanings respectively attributed to them by the Penal Code. Section 41, I.P.C., defines a 'special law' as a law applicable to a particular subject. The Evidence Act deals with the particular subject of evidence including the admissibility of evidence and is a special law within the meaning of the Code of Criminal Procedure. It follows therefore that no rule about the relevancy of evidence in the Evidence Act is affected by any provision in the Code of Criminal Procedure unless it is so specifically stated in the latter Code. The admission of guilt in the application dictated to Pearey Mohan and afterwards presented to the Magistrate was admissible under Section 21, Evidence Act. It did not

become irrelevant under Section 24 or Section 25 of that Act. The appellants were not in the custody of the police and therefore Section 26 of the Act does not affect the issue.

18. The learned Judge says that the Magistrate was not called upon to record the confession under the provisions of Section 164, Criminal P.C., when the application was presented to him, but, as I have already said, he seems to have thought that it would be against public policy to admit this document. For the reasons which I have given, I cannot agree with him. There is nothing in the Criminal Procedure Code which says that a confession contained in a document delivered to a Magistrate shall not be relevant in spite of the provisions in the Evidence Act. The learned Judge seems to have thought that the application should have been verified in accordance with the provisions of Section 364, Criminal P.C., because it was in fact verified before the Magistrate. I cannot see any force in this argument because it is the statement in the confession and not the verification of the statement which affords the evidence that the appellants were guilty. The learned Judge seems to have been influenced in some measure by the decision of their Lordships of the Privy Council in *Nazir Ahmad v. Emperor*¹ but that decision is quite irrelevant to the question which was before the Court. Their Lordships held that a Magistrate could not give oral evidence of a confession made to him if he deliberately ignored the provisions of Sections 164 and 364, Criminal P.C., and did not even purport to act under these Sections. There was no question in the case before me of the admissibility of oral evidence given by a Magistrate. I therefore hold that the confession was admissible.

19. I have already said that Jagan and Bissu did not admit that they had intended to make any confession, but there is an alternative argument that they were induced to make it in order that the police might use them as approvers in the case. There is no force in this contention. There was already ample evidence against the appellants and there is no reason why anybody should have thought that it was necessary to procure the evidence of Jagan and Bissu. If there had been any need to get the evidence of an approver there was no reason why two men should have been induced to confess in this way. The suggestion was that Hira Lal might have induced these two men to make this statement, but it is clear that the relation between them and Hira Lal was not such that Hira Lal would have any influence over them. This confession certainly affords corroboration to the other evidence against Jagan and Bissu.

20. It seems to me that there is evidence against the appellants which it is impossible to disbelieve. There is the evidence of four witnesses including Ramji who apparently had no reason for giving false evidence. Barku said that he had succeeded in a civil case against Ramji, but that does not afford any reason for thinking that Ramji would implicate him in this offence if he had not been guilty.

21. I have already explained that there is no force in the argument that the other appellants could not have been recognized because they were not mentioned specifically by Hira Lal in his report or by Ramji to Hira Lal immediately after the offence was committed. It appears that the Sub-Inspector of Police was away from the police station when Ramji's report was made, but he went to Ramji's house and recorded his statement about two hours later. The statement made by Ramji to the police was available to the appellants for purposes of contradiction and was not available to anybody else. The fact that this statement was not put to Ramji is a good reason for assuming that it would not have helped the appellants. The Sub-Inspector has deposed that he took the statement of Paras Nath immediately afterwards and the same arguments apply to this statement.

22. The appellants have attempted to place some reliance upon the fact that the Sub-Inspector did not take the statements of the other witnesses till 18th November. The Sub-Inspector has however explained that he was busy with other work on the 17th and there is no reason to doubt the truth of what he has said. In this country a Sub-Inspector when he is conducting an Investigation is not excused from other duties and he can conduct his investigations only in so far as his other duties allow him to do so.

23. The appellants can give very little reason why they should have been implicated if they were innocent. Ram Naresh has said in one place that Ramji had asked him to bring pilgrims to him and he had refused and for that Ramji was angry with him. He has said in another place that Ramji owed him Rupees 100 because he had taken pilgrims to him and he was entitled to some commission. It cannot be argued with any force that there was any Sufficient motive for Ramji to implicate this man if he was not concerned in the offence. It is admitted that the man is or was a servant of Janki Ram Joshi. Banarsi has said that he is an Arya Samajist and that he published some pamphlets against Ramji and others. Some pamphlets have been produced but have not been proved. Even if pamphlets of this kind were published I do not think that that would establish the fact that there was any enmity which would afford a sufficient motive for the manufacture of a false case against this man. Even if Ramji had wished to implicate Banarsi there is no reason why the other witnesses should have agreed to help him. In Banarsi's case there is also his subsequent conduct, i.e. his writing a letter to the Sub-Inspector which was, to say the least of it, exceedingly suspicious. Jagan and Bissu say that they do not know why they were implicated.

24. The final argument addressed to me by the appellants was that there was no particular reason why any of these people should have attacked Ramji. Barku certainly had motive because Ramji had taken steps to get his brother arrested, and Ram Naresh was employed by an enemy of Ramji. The suggestion is that the other appellants were friends of these people. There is evidence that they were seen consorting with the other appellants. The point however is of no importance. We cannot know what motives actuated the appellants. We do know that there is conclusive evidence that they did take part in this offence. There is no force in the appeal and I dismiss it.

Cases Referred.

1(1936) 23 A.I.R. P.C. 253

