

# CALCUTTA HIGH COURT

Monoranjan Bhattacharjya

Vs

Emperor

(Rankin, J.)

04.07.1922

## JUDGMENT

### **Rankin, C.J.**

1. In this case five accused persons were tried before Commissioners appointed under the Bengal Criminal Law Amendment Act, upon a charge that on 14th March 1932, they committed a dacoity in Charmaguria Post Office and that in the course of committing that dacoity jointly a murder was committed by which one Tahir lost his life. All the accused were charged under Section 396, I.P.C., and the accused Monoranjan was also charged under Sections 302 and 326, I.P.C., and Section 19-F, Arms Act. The alleged occurrence having; taken place in March the trial was held in the month of May following.

2. It appears that the prosecution case is this: that very shortly after three o'clock in the afternoon five persons came into the Charmaguria Post Office. Two of them carried revolvers, one large and one small and another carrying a dagger. The men with revolvers pointed their weapons at the Post Master who had with him in the room some four or five assistants and one outsider named Anath Chatterji. Under threat of these revolvers the Post master gave up keys and, to cut a long story short, the contents of the Post Office were rifled and one of the sounders of the telegraph apparatus was dismantled. One of the accused, namely, Monoranjan is said to have waited outside the northern door of the Post Office with a revolver as soon as the looting began. It does not appear from the evidence that he re-entered the Post Office again. Another of them, Surendra, who was a person of the age of 30 and apparently the oldest of the accused is said to have threatened the Post; Office staff that they were not to give any evidence as to what had taken place. Now, these people having left the Post Office went down a road with their booty and were chased by the members of the staff who had the advantage, as the chase proceeded, of the assistance of a good number of villagers. The dacoits were walking quickly and from time to time in the course of the pursuit fired back at their pursuers without hitting any one. The path which they chose lay over a khal and finally ended in a field. By this time a large number of men were pursuing and the pursuers were throwing clods of hard earth on the dacoits, At this stage it appears one of the accused men fell down and a villager called Tahir ran up and seized him; and it is said that Monoranjan who was in front of the man who had fallen down turned back and stabbed Tahir on the back as he was grappling with the man whom he had seized and Tahir died almost immediately thereafter. Thereafter the man who had fallen down and Monoranjan

continued their flight. Soon afterwards, a postal, employee called Lalit ran up and seized one of the dacoits and the same man, the accused Monoranjan, who had stabbed Tahir came and stabbed Lalit on the back. Lalit was very dangerously wounded. The learned Commissioners described him as hovering between life and death; but ultimately he recovered. The five accused persons were overpowered and were taken either to the hospital or to the thana according to their condition.

3. On this appeal it could not be and has not been contended before us that these five accused persons were not the persons arrested in that field and it has not been contended before us that any one of them was not present at the time of the commission of the dacoity. So far the case is amply proved and this simplifies our task very much. I propose to deal with the three points which have been placed before us. First of all on behalf of Monoranjan, Mr. Chatterji, while not disputing that he took part in the dacoity, desired to dispute that he was the man who gave the fatal stab to Tahir. The second point which has been indicated to us is this: It is said that if Monoranjan or any other member of this party did stab Tahir and did murder him that was not a murder committed in the course of the dacoity, or to use the exact language of Section 396, "in so committing the dacoity." The third question which has been indicated in respect of each is the question of sentence.

4. Now, the first question is whether it is clearly and properly proved, as the Commissioner found, that the person who stabbed Tahir was Monoranjan. (His Lordship after discussing evidence concluded that Monoranjan was the dacoit who did stab both Tahir and Lalit in the manner alleged in the prosecution case). Nothing could be more elaborate or painstaking or clear than the judgment of the learned Commissioners who have dealt with these questions in every phase and in a most careful and satisfactory way. I have no doubt at all that the offence committed by Monoranjan in the case of Tahir was the offence of murder and nothing short of it. He stabbed the man fatally meaning to kill him in order to rescue his companion certainly knowing and certainly meaning to cause him an injury which he knew would be likely to cause death. On that question therefore the appeal of Monoranjan fails.

5. The next question is whether the murder of Tahir was committed in the course of committing the dacoity. It has been contended before us that though these dacoits were followed up from the earliest moment after the Post Office had been robbed until they got to the stage at which they were being pursued in the field by the Post Office staff and a large number of villagers, nevertheless they had dropped their booty a short while before Monoranjan turned back and stabbed Tahir; and that, because they dropped their booty a few minutes before, the offence of murder of Tahir was not committed in the course of committing the dacoity. In my judgment, that contention fails, first of all, completely upon the facts because it is not the state of the evidence that the booty and the whole of the booty had been abandoned before the murder took place and, secondly, because if it were true it would make no difference whatever to the applicability of Section 396, I.P.C. In order to commit dacoity it is necessary not only that the dacoit should get the booty away but that he should get away with the booty and as long as he is being pursued in hot haste after the act of the dacoity has just been committed and is in flight for the purpose of completing his offence, it is idle to contend that the dacoity is complete, and that another transaction and a separate transaction has begun. In my judgment, it is clear enough in the present case that the murder was committed by one dacoit, he being one of several who jointly committed the dacoity and that it was committed in the course of the dacoity for the

purpose of completing it.

6. These two conclusions and the admitted facts of the case dispose of everything arguable in the present appeal except the question of sentence. It follows that Monoranjan has been rightly convicted under Section 302 as well as Section 396, I.P.C. and that all the other accused have been rightly convicted under Section 396, I.P.C. On the question of sentence upon Monoranjan it has to be observed that not only has he committed the murder in the course of the dacoity but that he has committed it in the course of a dacoity which was being effected by the use of revolvers and a dagger. There is no reason why it should not be taken that every one of those persons who went into the Post Office was prepared to commit murder if necessary in prosecution of the dacoity. Had the Post Master or his assistants shown fight at the beginning there can be no doubt that the revolvers, which had been brought there for the purpose, would have been used. In addition to this circumstance we have this: Monoranjan stabbed two people. It is true that he did not succeed in killing Lalit, He came back and stabbed Tahir in order that his companion should escape. Another man Lalit having seized a companion was likewise dealt with and it is nothing but good fortune that the life of Lalit was not taken as well as the life of Tahir. In these circumstances, I should have thought that a very important consideration in the mind of any Court in considering the sentence to be imposed on Monoranjan is the duty that lies upon the Court of seeing that all proper protection is given to any member of the public who is brave enough to do his duty in trying to arrest dacoits. I am very glad to find that the majority of the Commissioners have rejected the idea--to my mind a somewhat curious idea--that murder committed because the criminal is being brought to bay and in his desire to escape, is a murder committed in extenuating circumstances. I trust that that doctrine will never find a place in the practice of law in this province. All sound opinion and all right reason go to show that a murder committed by a person in carrying out a nefarious end and in the course of making good his escape is a particularly bad type of murder, a type of murder against which the public require the strongest possible protection. In my judgment, the murder committed by Monoranjan in this case should be regarded in that way. This accused it appears said that he did not know his age but he thought he was about 19, The Commissioners think that he is older. They put his age as about 24. Whichever be his age capital sentence which has been passed upon him is the only appropriate sentence in his case. This appeal therefore must be dismissed.

7. As regards the accused Surendra, he appears to be a man of the age of 50 and from the evidence of what took place in the Post Office it is difficult to doubt that he was the leader of the gang. He was armed with a large revolver and he took part in the initial stage of threatening the Post Master. Having regard to his age and to the part he took in these proceedings I can only say that I consider him very lucky not to have been sentenced to death as well as Monoranjan. In my judgment, such a sentence would have been well within a reasonable discretion on the part of the Commissioners: also the sentence of transportation for life is a sentence which I should have been prepared to pass under Section 395 even if it had not been proved that the murder committed by Monoranjan had been committed in the course of the dacoity so as to attract Section 396. In my judgment, his appeal must be dismissed.

8. The other accused before us have been treated very leniently in this case under Section 396, I.P.C.; they have been given seven years' rigorous imprisonment each. In my judgment, it would have been a miscarriage of justice if any smaller sentence had been passed upon them.

9. The result is that the appeals of all the accused must be dismissed.

**C.C. Ghose, J.**

10. I agree.

**Costello, J.**

11. I agree.