(1950) 06 P&H CK 0014

High Court Of Punjab And Haryana At Chandigarh

Case No: Criminal Appeal No. 73 of 1950

Charan Das Narain Singh	APPELLANT
Vs	
The State	RESPONDENT

Date of Decision: June 16, 1950

Acts Referred:

- Penal Code, 1860 (IPC) - Section 114, 300, 302, 52, 76

Citation: AIR 1950 P&H 321

Hon'ble Judges: Savinder Singh Sodhi, J; Khosla, J

Bench: Division Bench

Advocate: S. Daljit Singh for S. Jhanda Singh, for the Appellant; S. Kartar Singh, Asst. Advocate-General, for the Respondent

Judgement

Khosla, J.

Charan Das, a constable of the National Volunteer Corps, was tried by the learned Additional Sessions Judge of Ferozepore upon a charge of murder under S. 302, Penal Code. Along with him Harnam Singh, Havildar, was also tried upon a charge under S. 302, read with S. 114, Penal Code. The learned Sessions Judge acquitted Harnam Singh and convicting Charan Das under S. 302, Penal Code, sentenced him to transportation for life. Charan Das has come up in appeal to this Court.

2. The charge against the appellant was that he murdered a refugee woman Mt. Rani by shooting her with a rifle on the evening of 14th November 1948. The story for the prosecution briefly is that information was received that some persons were gambling in a tent in the Refugee Camp at Muktsar. The Camp Commandant sent a party to make an enquiry into this matter. The party consisted of Baltej Singh, Supervisor, Refugee Camp (P. W. 3), Lekh Raj (P. W. 4), Charan Das appellant and Harnam Singh. The party arrived outside the tent and surrounded it. Harnam Singh was asked to go inside and see if people were really gambling. Soon after this the report of a gun was heard and Mt. Rani who was inside the tent was found to have

been shot dead. Narain Das (P. W. 17) received an injury. The shot had been fired from the rifle of Charan Das appellant, and it was said that Harnam Singh had ordered him to fire the gun and in obedience to these orders Charan Das had shot Mt. Rani dead. Charan Das and Harnam Singh were both accordingly sent up to stand their trial with the result indicated above.

3. At the trial Charan Das admitted that be had fired the shot but pleaded that be had done so in obedience to the orders of his superior officer, Harnam Singh, Havildar.

4. There can be no doubt whatsoever that Charan Das fired a gun as the result of which Mt. Rani died. On this point we have the evidence of a number of witnesses e. g., Baltej Singh, Lekh Raj, Jhanda Singh (P. W. 5) and Lal Chand (P. W. 6). The appellant himself admitted this part of the prosecution story and nothing further need be said on this account. The only question that remains for determination is whether the appellant is guilty of any offence if it is assumed that be acted in obedience to the orders of his superior. There can be very little doubt that the gun was fired as the result of an order issued by Harnam Singh, Havildar. On this point we have the evidence of Lekh Raj (P. W. 4), Jhanda Singh (P. W. 5) and Lal Chand (P. W. 6). The other witnesses do not say that Harnam Singh issued any orders, but in view of the testimony of these three witnesses I must hold that Harnam Singh issued an order, and whether this order was misunderstood or misconceived by Charan Das appellant the gun was fired as a consequence of the order issued by Harnam Singh. There can, however, be no doubt that the order issued by Harnam Singh was wholly unjustified and unlawful. There was no occasion for firing and, therefore. Charan Das cannot be exonerated from the consequences of his act. To plead that he acted in obedience to the orders of Harnam Singh would not excuse him because the order was unlawful. Obedience of an unlawful order does not exonerate or excuse the person who commits an offence as a consequence of such an order. Therefore, Charan Das is clearly guilty of the offence of murder and his conviction must be upheld. He has been awarded the lesser sentence of transportation for life and we cannot interfere on this score. In view of the peculiar circumstances of this case, however, we consider that this is a proper case in which the Government might interfere under the provisions of S. 401, Criminal P. C. Charan Das is a raw youth of 20. He had apparently been recruited to the National Volunteer Corps recently. He may have had an exaggerated notion of his duties or of the authority wielded by his superiors. In the circumstances, I cannot treat his case in the same way as the case of an ordinary murder, and I would therefore, recommend that the Punjab Government might in their clemency order that Charan Das undergo a sentence of three years'' rigorous imprisonment instead of transportation for life which is the only lawful sentence that can be awarded by this Court.

Soni, J.

5. I agree, As the case raises a point of some importance I add my reasons for agreeing with my learned brother. The facts are given in the judgment of my learned brother. On information received that gambling was going on in a tent in the Refugee Camp, the tent was surrounded by Havildar Harnam Singh and the armed constables of National Volunteer Corps under him. Directions were given to the inmates of the tent not to move out on which they protested. One of them Narain Das tried to go out. Order was given by Harnam Singh to fire. Charan Das, one of the armed constables under Harnam Singh, fired as a result of which Narain Das and a woman Rani were injured, Rani succumbing to her injuries, Charan Das when put before the committing Magistrate was asked the following question :

Did you on 14th November 1948, at about 9 p. m. at the instance of Havildar Harnam Singh fired a shot which hit Rani and Narain Dass and thereby murdered Rani ? His answer was : Yes, I did fire a shot at the bidding of Harnam Singh.

He stuck to his answer at the trial in the Court of Session. In the appeal before us, the question is whether the offence of murder was committed by Charan Dass or not, the Sessions Judge holding that he had committed murder.

6. The plea of Charan Das is the plea of justification. But consider the circumstances. In the tent ft murder was not being committed. The information merely was that gambling was going on. No violent mob had gathered there. These facts were known to Harnam Singh and Charan Dass, Section 79, Penal Code, says :

Nothing is an offence which is done by any person who is justified by law, or who by reason of a mistake of fact and not by reason of a mistake of law in good faith, believes himself to be justified by law, in doing it.

The facts were known to Harnam Singh. No murder was being committed in the tent. No mob was there bent on violence. There was absolutely no excuse in ordering the firing. The order was wholly illegal. See the illustration to the section which reads as follows :

A sees Z commit what appears to A to be a murder. A in the exercise, to the best of his judgment, exerted in good faith, of the power which the law gives to all persons of apprehending murderers in the act, seizes Z, in order to bring Z before the proper authorities. A has committed no offence, though it may turn out that Z was acting in self-defence.

7. Section 76 of the Code says :

Nothing is an offence which is done by a person who is, or who by reason of a mistake of fact and not by reason of mistake of law in good faith believes himself to be, bound by law to do it.

The facts were known to Charan Das. Harnam Singh''s order was wholly illegal. As I said before, there was no disorderly crowd bent on violence which had to be

dispersed. No murder was being committed. In the circumstances Charan Das was not bound to obey the order to fire. In fact his duty, in the circumstances, was to disobey any such absurd order which had not the slightest justification in law. A soldier is not protected where the order is grossly illegal. In R. v. Smith, (1900) 17 (S.C.R.) 561, (Keir and Lawson, Cases on Constitutional Law, p. 348) Solomon J. quoted with the approval the following passage from the British Manual of Military Law :

If commands are obviously illegal, an inferior would be justified in questioning or even refusing to execute such commands, but as long as the orders of the superior are not obviously and decidedly in opposition to the law of the land, or to the well known established customs of the army, so long must they meet with complete and unhesitating obedience.

8. In the present case the order was necessarily and manifestly illegal. There was merely a suspicion of gambling and nothing more. The legal principles involved are discussed by Dicey in his "''Law of the Constitution" Dicey quotes Stephen''s History of Criminal Law from which the following quotation may be taken :

Soldiers might reasonably think that their officer had good grounds for ordering them to fire into a disorderly crowd which to them might not be at that moment engaged in acts of dangerous violence, but soldiers could hardly suppose their officer could have any good ground for ordering them to fire or volley down a crowded street when no disturbance of any kind was either in progress or apprehended

Rattigan J. had occasion to consider the provisions of S. 76, Penal Code, in the case of Niamat Khan v. Empress, 17 P. R. 1883 (Cr.) where he observed as follows at p. 39 :

Now to entitle a person to claim the benefit of that section it is necessary to show the existence of a state of facts which would justify the belief in good faith, interpreting the latter expression with reference to S. 52, Penal Code, that the person to whom the order was given was bound by law to obey it. Thus in the case of a soldier, the Penal Code does not recognise the mere duty of blind obedience to the commands of a superior as sufficient to protect him from the penal consequences of his act. Difficult as the position may appear to be, the law requires that the soldier should exercise his own judgment, and unless the actual circumstances are of such a character that he may have reasonably entertained the belief that the order was one which he was bound to obey, he will be responsible like any other same person for his act, although he may have committed it under the erroneous supposition that his superior was by law authorised to issue the order. His mistake in short must be a mistake entertained in good faith on a question of fact. Such a construction of the law may indeed subject to the soldier to military penalties, and, in certain cases, place him in the serious dilemma of either

refusing to obey an order which he believed to be unjustifiable in fact, thereby rendering himself liable to military law, or, by obeying it, to subject himself to the general criminal law of the land. But on a balance of considerations the Legislature has deemed it wise for the safety of the community that no special exemption should be allowed to a soldier who commits what would ordinarily be a penal offence from that enjoyed by any other person, who does the same act believing in good faith that he is bound by law to do it. A mistake of law is either case would afford no protection, though it might go in mitigation of punishment, and thus military discipline, while it regulates the conduct of the soldier in military matters, is made subject to a higher law in favour of public safety, when the act which the military discipline attempts to enforce or to justify is one which affects the person or property of another. In such a case the civil law looks to the surrounding circumstances to see whether they are of such a character as would lead to a man of ordinary intelligence to entertain a reasonable belief that he is bound by law to obey the command of his superior.

9. Look at the surrounding circumstances in this case. Could any one acting with due care and attention have believed that the Havildar had any semblance of justification in ordering firing at a person trying to get out of a tent where no disturbing mob had collected and where there was no other allegation except that gambling might be going on ? The order was wholly unjustified and the firing by Charan Das and the killing in obedience to the order was murder.

10. I have also considered whether Charan Das''s offence might be covered by Exception 3 to S. 300. That Exception reads thus :

Culpable homicide is not murder if the offender, being a public servant or aiding a public servant acting for the advancement of public justice, exceeds the powers given to him by law, and causes death by doing an act which be, in good faith, believes to be lawful and necessary for the due discharge of his duty as such public servant and without ill-will towards the person whose death is caused.

I cannot say that in the circumstances of this case, knowing the facts as Charan Das must have done, he was advancing public justice or that he was believing in good faith, that is, believing with due care and attention, that it was necessary for him to obey Harnam Singh and fire with fatal results. The Exception, therefore, does not apply.

11. "The only superior to be obeyed", as Jardine J. put it in the case of Queen-Empress v. Latif Khan, 20 Bom. 394; "is the law" and "no superior is to be obeyed who dares to set himself above the law". At the same time, I agree with my learned brother that Charan Das was a raw youth of 20, who may have had (as my learned brother puts it) an exaggerated notion of his duties or of the authority wielded by his superiors. I concur in the recommendation that his is a fit case for clemency by Government and that a sentence of 3 years'' rigorous imprisonment

would be a adequate punishment in this case.