

(1878) 08 AHC CK 0002

Allahabad High Court

Case No: None

Empress of India

APPELLANT

Vs

Chattar Singh and
Others

RESPONDENT

Date of Decision: Aug. 15, 1878

Citation: (1880) ILR (All) 33

Hon'ble Judges: Robert Stuart, C.J; Pearson, J; Oldfield, J

Bench: Full Bench

Final Decision: Disposed Of

Judgement

Robert Stuart, C.J.

In this case the Judge, after stating the opinion of the Assessors and recording his own judgment, by which he convicted the whole four prisoners of murder and sentenced them to death, has added to his judgment a "note" by which he endeavours to throw doubts on the conclusion at which he had arrived on the evidence. I feel it my duty to state that, in my opinion, this was a most unwarrantable proceeding on the Judge's part, and that nothing that that note contains can be considered by us in disposing of the question whether the sentence shall be confirmed or not. The reasoning of the note is also such as ought not to be made use of in a criminal case. The Judge states in this note that he feels bound to express a doubt that has arisen in his mind as to the complicity of Kundan and Dungan in the murder "a doubt that," he adds, "is not supported by the evidence but by the probabilities of the case." The note further states that "it is true that the direct evidence of the eye-witnesses is to the effect that all four of the accused struck Shere Singh," adding, however, "but in this country it is no uncommon thing for the most truthful witnesses to add to their evidence somewhat beyond what they actually saw," although in his judgment he refers in terms of strong approval to the evidence of the principal witness for the prosecution, whom he describes as "a respectable-looking old man, who gave his evidence in a straight-forward manner

that convinced me of the truth of what he said." The note states further "probabilities" wholly unsupported by the evidence, and I actually find in it the following extraordinary remark: "although I have heard it stated out of Court that such were the real facts of the case (that is his probabilities and surmises after the trial) no evidence is forthcoming to support it": and the note ends with the following conjecture: "as it appears to me possible that the part taken by Kundan and Dungar in this affair may have been somewhat exaggerated, and as it is certain that Shere Singh was actually killed by Lachman and Chattar, I would recommend the remission of the capital sentence in the case of Kundan and Dungar." Now, not a word of this is supported by the evidence, or any portion of it, which was given before the Judge himself at the trial, and I do not see that we are driven to conclude that Shere Singh was actually killed by Lachman and Chattar. On the contrary, there is evidence suggestive of a different state of things. There are other uncalled-for remarks in this note, but I have stated enough to show its improper and unwarrantable character, and to justify me in expressing the hope that such an inadmissible appendage to a criminal record may never be brought before us again.

2. The facts and circumstances we have to consider appear to be these: The four convicts were all closely related to each other; three of them are brothers, and the fourth is a cousin, and they all lived together in the same enclosure, The deceased was one of the lambardars of the village, and he had on several occasions been obliged, in the discharge of his duty, to oust the accused from their holding; and bad feeling therefore existed between them and the murdered man, or rather on their part against him. As the Judge points out, no less than six different cases or causes of quarrel on this score were stated by Chattar and Lachman before the committing Magistrate, and there can be no doubt of the bitter enmity entertained by these men against the deceased. Nor is there anything in the evidence to show that this enmity was shared more largely by any one of the four than by the others. They appear to have been all actuated by the same ruthless feeling, and to have acted on the night of the murder on a plan preconcerted among them all. This concert and identity of motive will appear from the method and manner of the attack upon the deceased, as deposed to by the witnesses for the prosecution, especially Khushali, who is described by the Judge as a respectable, straightforward, and reliable witness. From the evidence thus afforded it appears that on the evening of the 8th June last, at about 9 P.M., Shere Singh was returning from the bazaar to his house with the witness Khushali, and they had reached a shop, Shafkat's shop, when the accused Chatter Singh, accompanied by his brother Lachman Singh, came up from behind and struck Shere Singh heavily on his head with a lathi. The blow made Shere Singh stagger, but it was immediately followed by another blow from Lachman Singh, and Shere Singh then fell senseless to the ground uttering these words--"Ram, Ram." Khushali, the witness, cried out when he saw his companion thus assailed, but received a blow from Lachman which appears to have induced him to refrain from further interference. Meanwhile, from a spot which appears to

have been exactly or nearly opposite to that where Shere Singh had just been attacked and felled by Chattar Singh and Lachman Singh, the two other accused, Kundan and Dungar, ran up, also armed with lathis, and beat Shere Singh as he lay on the ground, on the head, also, as it would appear. The four murderers then ran off pursued by Aulad Ali the chaukidar; but the four accused succeeded for the moment in reaching and securing themselves in their house, seeing which Aulad Ali returned, and found that Shere Singh was dead. The concert and identity not only of motive but action on the part of the whole four accused is thus shown.

3. Nor is it, I think, material, as against the concerted action and equal guilt of the whole four criminals, to consider whether, when Kundan and Dungar came up and added their blows to those of the other two, Shere Singh was then dead or still alive. The impression made upon me on this part of the case is that Shere Singh was alive, and had not then breathed his last, and that in all probability the blows of Kundan and Dungar sealed his fate. On this subject the post mortem examination by the Civil Surgeon is very important. It results, in the first place, from this gentleman's report, dated the 9th June, that, when Shere Singh was attacked, he was in a natural and healthy condition of body, and when he first saw the body he described it as that of a healthy-looking man." On examination the Civil Surgeon found "the top of the head smashed in, skull fractured into small pieces, scalp torn, and brain lacerated and protruding." Such being the terrible nature of the violence used against the unfortunate deceased, I scarcely think it reasonable to conclude that such fearful injuries were solely produced by the blows of the two first assailants, Chattar and Lachman; the condition of the head, on the contrary, indicates that the blows of Kundan and Dungar contributed in no small degree to the frightful state of things deposed to by the Civil Surgeon; and whether the deceased was still alive or already dead when Kundan and Dungar attacked him with their lathis is, in my opinion, immaterial to the question of their guilt. That they believed Shere Singh to be alive when they attacked him I have no doubt whatever, and I do not see that we are compelled by the evidence to conclude that he was then dead. Such would also appear to be the opinion formed by the Judge at the trial. For, in summing up the evidence in his judgment, he states that the witnesses for the prosecution "tell the same story, and swear that all four accused deliberately and barbarously murdered Shere Singh; they all say that Chattar struck first, and then Lachman, and that the blows of these two dropped Shere Singh, and that the other two prisoners, Kundan and Dungar, hammered him while on the ground." The Judge further states correctly that the four accused lay in wait for the deceased, took him unawares, closed in on him, and beat his brains out." I have carefully read the evidence, and have no hesitation in approving this statement of the effect of it. There can indeed be no doubt that this is a correct statement of the effect of the evidence; and it shows, I think, that the whole four accused acted together and participated in the murder, and that they all are equally guilty.

4. Finding, therefore, that I cannot make any distinction between the two sets of the assailants, I would confirm the sentence of death on them all.

Oldfield, J.

5. Four persons have been convicted of murder, and sentences of death passed upon them and referred for confirmation. In respect of two, Kundan and Dungar, the Judge has added a proceeding, dated four days after he passed judgment, from which it would appear that he subsequently entertained doubts of the guilt of these two prisoners, and he recommends the remission of the capital sentences in their cases.

6. There can be no doubt of the guilt of Chattar Singh and Lachman Singh, and the evidence points to the conclusion that the attack with intent to murder Shere Singh was premeditated. He had been sitting with Khushali, a witness, at the shop of Bakhshi Chaudhri, and at 8 or 9 P.M. the two were walking homewards, and had arrived opposite the shop of Shafkat, not far off, when they were attacked by Chattar Singh and Lachman Singh. The former struck the first blow of a club, which was at "once followed by a Wow of a club from Lachman Singh, and the deceased fell to the ground. It then appears that the other two prisoners came up from the opposite direction and struck deceased when he was down, and that all four ran off" to their house not far off, where they appear to have resisted the attempt of the police to arrest them, and their arrest was finally made at 4 A.M.

7. There appears to me to be no appreciable difference in the guilt of Chattar Singh and Lachman Singh, and I would confirm the sentences of death passed on them. With regard to Kundan and Dungar, I see no reason to distrust the evidence or to participate in the doubts which appear to have occurred to the Judge after close of the trial, and from reports which he must have picked up out of Court. The Judge admits that these doubts are not supported by the evidence on the record, nor does he inform us that he is in a position, or that the accused are able, to support them by any evidence which is capable of being procured.

8. On the contrary, the recorded evidence does not appear to be open to distrust. The accusations implicating these two persons were made without any delay by persons who have no interest to accuse them falsely; the statements of the witnesses are consistent; and it is shown that these two prisoners were on or near the spot where the outrage occurred by the substance of their own statements; and that they retreated with the other prisoners to the same house after the crime was perpetrated; and they had equally with the others a motive for the murder. They seem to have joined in a conspiracy with Chattar Singh and Lachman Singh, but they did not begin the attack, and it is doubtful if the death-blows were inflicted by them: for these reasons I would commute the sentence of death passed upon them to transportation for life.

9. The learned Judges who heard the case differing in opinion as to the proper sentences to be passed on Kundan Singh and Dungar Singh, the case was consequently referred to a third Judge, with reference to the provisions of Sections 271 * and 287 ♦ of the Criminal Procedure Code.

Pearson, J.

10. I concur generally in the view of the case taken by my hon"ble colleague Mr. Justice Oldfield, and am of opinion that the claims of justice will be sufficiently met by the sentences proposed by him.

*Appeals by persons convicted by Session Court.

[Section 271:--Any person convicted on a trial held by a Sessions Judge may appeal to the High Court. The appeal may be on a matter of fact as well as on a matter of law.

If the conviction was in a trial by jury, the appeal shall be admissible on a matter of law only.

If such person be sentenced to death, the Sessions Court shall inquire whether he wishes to appeal, and if he signifies his intention to appeal, the Court shall inform him that his appeal must be made within seven days, and shall delay the transmission of the reference, hereinafter required, for a reasonable time, not exceeding seven days, to allow of the appeal and reference being made at the same time.

When it appears that the execution of the sentence should not be delayed, the Sessions Court may record its reasons and forward the reference at once.

In no case requiring confirmation shall the High Court grant a longer delay than is herein allowed for the presentation of an appeal.

Where the reasons given by the Sessions Court for forwarding the reference at once are sufficient, the High Court shall decide the case in the absence of an appeal.

When, under the provisions of the law in force, judgments or orders made or passed by the High Court are made or passed either in appeal, reference or revision, by a Court consisting of more than one Judge any difference of opinion shall be settled by adding, when the High Court is composed of more than two Judges, and the Court is equally divided, one or more Judges, and in such event the Judgment or order shall follow the opinion of the majority of the Judges.]

♦Sentence of death.

[Section 287:-- If the Court of Session passed sentence of death, the proceedings shall be referred to the High Court, and the sentence shall not be executed without the confirmation by the High Court. If the accused person is convicted of an offence punishable with death and the Court sentences him to any punishment other than

death, the Court shall, in it, Judgment, state the reason why death was not passed.]