

(1941) 09 AHC CK 0007

Allahabad High Court

Case No: Criminal Appeal No. 497 of 1940

Emperor

APPELLANT

Vs

Abdul Hakim alias
Hakima or Mohd.
Ibrahim

RESPONDENT

Date of Decision: Sept. 17, 1941

Hon'ble Judges: Mulla, J; Ismail, J

Bench: Division Bench

Advocate: Government Advocate for Crown, for the Appellant; Ishanul Haq for
Respondent, for the Respondent

Final Decision: Dismissed

Judgement

Ismail and Mulla, JJ.

This is an appeal by the Provincial Government against a finding of acquittal recorded by the learned Sessions Judge of Bulandshahr in a case in which one Abdul Hakim alias Hakima or Mohammad Ibrahim who appears as the Respondent in this appeal was charged under S. 307 and 252 B, I.P.C.

2. The facts of the case are very simple. On the 5th of December, 1939, some time between 6 and 6.30 A.M. two police constables named Sri Ram and Ali Ahmad were sitting at the Nars 1 Ghat Police outpost in the city of Bulandshahr when they received information from some person, whose name has not been disclosed and who has not been examined as a witness in the case, that some bad characters were sitting and talking together on the bank of a river near the burning ghat. A small stream called Kali Nadi flows by the city of Bulandshahr and it is this stream that has been referred to in the case as a river. Upon receiving this information the two constables started at once for the spot and on their way they picked two persons named Bishambhar Dayal and Rais Ahmad to act as witnesses. The place indicated by the informer was only about 3 furlongs away from the police outpost. When this party approached the place, they saw one man sitting alone on the bank of the river

below the embankment. An attempt has been made by Constable Sri Ram in his evidence to show that this man, who subsequently proved to be Abdul Hakim, the Respondent in this appeal, was trying to conceal his presence in a culvert. It appears, however, that in his first report of the incident which he made about half an hour later he said nothing about any culvert at all. It appears further that two of the prosecution witnesses, namely Bishambhar Dayal Vaish and Rais Ahmad have said nothing more than this that the Respondent was found sitting alone on the bank of the river below the embankment. The prosecution has examined four witnesses to Drove the details of the incident, namely the two constables and two witnesses whom they had taken with them namely Bishambhar Dayal, Rais Ahmad, Sri Ram and Ali Ahmad. There is again a material discrepancy in the evidence of constable Ali Ahmad and Rais Ahmad on the one hand and constable Sri Ram and Bishambhar Dayal Vaish on the other, the former have tried to prove that when their party approached the spot where the Respondent was sitting alone, the constable first asked him to disclose his identity, the latter are equally clear that no question at all was put to the Respondent bat, as soon as the police party arrived on the spot, the two constables rushed at the Respondent in order to arrest him. The story is that the Respondent at first threatened the constables who were approaching him with that object in view, but as they persisted and as Constable Sri Ram actually laid hands upon him, he brought out a knife and gave a stab with it which caused a wound on the left shoulder of Constable Sri Ram. Constable Ali Ahmad also rushed at him and the Respondent delivered one blow at him also. There was a scuffle in the course of which he delivered two more blows which fell on Constable Sri Ram. The Respondent was ultimately overpowered and marched off to the police outpost. Upon his person being searched a number of articles were found including a burglar's jemmy with which alone we are concerned in this appeal.

3. The Respondent made no statement in the Court of the Committing Magistrate, but at his trial he put forward a rambling story, the substance of which is that he had come from Meerut to Bulandshahr in search of one Dr. Fateh Muhammad who had embezzled or stolen some money and while he was making some enquiries from some Hindu residents of Bulandshanr on the road in the vicinity of the burning ghat the two constables accompanied by one other person appeared on the scene and asked him why he was there and whoa he was after. They took him along with them to the thana and there two badmashes named Wall Muhammad and Bundu and some other persons appeared on the scene. The two badmashes asked him to give them some money and said that without paying something to them he would not be able to discover any trace of Dr. Fateh Muhammad. When he refused to make any payment, they and the constables set upon him and when they were about to overpower him, he brought out a knife and struck at them in defending himself. He also states that he never knew that two of the persons who had thus attacked him were police-constables.

4. The learned Sessions Judge acquitted the Respondent holding that in the circumstances of the case he had a right of private defence and did not exceed that right. This finding had been challenged by the Provincial Government and all that we have to consider in this appeal is a pure question of law. The first point which arises for consideration is whether the two constables had any right to arrest the Respondent at all. Upon the facts disclosed in this case we have no hesitation in answering that question in the negative. All that is alleged in the first report made by Constable Sri Ram is that his informer had told him that some bad characters were sitting and talking together on the bank of the river near the burning ghat. Nothing further than this has been disclosed by the evidence produced by the prosecution at the trial. The informer himself has not been examined and we do not, therefore know whether he had any reason at all to say that the person or persons whom he had seen together on the bank of the river near the burning ghat were bad characters. Again it is clear in view of the time of the day at which the information was conveyed to the police constables that it would hardly be a case of any bad characters concealing themselves with a view to committing some crime. It is true that the incident took place on the 5th of December, but the prosecution witnesses themselves admit that it was somewhere between 6 and 6 30 and it was clear daylight at the time. Now in the absence of anything to show that the police constables had any valid reasons for believing that some bad characters were concealing their presence in order to commit some crime, we see no justification for the hasty action taken by two police constables in this case. After all even bad characters have the liberty under the law to sit early in the morning by the bank of a river and to talk to each other. It was no case for the hurried action taken by the two constables. It is also to be borne in mind that if the information was that some bad characters were trying to conceal their presence with a view to committing some crime, the two police constables had no authority under the law to make any arrest. Upon that information action could be taken only under S. 55 of the Criminal Procedure Code which runs:

1. Any officer in charge of a police station may, in like manner, arrest or cause to be arrested-

(a) any person found taking "precautions to conceal his presence within the limits of such station under circumstances which afford reason to believe that he is taking such precautions with a view to committing a cognizable offence.....

5. It is not even suggested in the present case that the two constables had been authorised by the officer in charge of the police station to arrest the person or persons regarding whom information had been received in the circumstances stated above. The learned Government Advocate relied upon the second clause of S. 54, Criminal Procedure Code which runs as follows :

Secondly, any person having in his possession without lawful excuse the burden of proving which excuse shall he on such person, any implement of house-breaking,

6. The argument is that as a matter of fact a jemmy was recovered from the possession of the Respondent and hence the two constables were justified in arresting him under this second clause of S. 54, Criminal Procedure Code. We have no hesitation in saying that this argument has no force at all. A careful perusal of S. 54 would show that in several other clauses there is a distinct provision made by the law to enable a police officer to act upon a reasonable suspicion whereas in the second clause there is no such, provision. It is clear from the language of this clause that what the law contemplates is definite knowledge or information on the part of the police officer before he takes any action under S. 54, Criminal Procedure Code. In the present case " it is perfectly clear that the two constables could not expect to find a jemmy in the possession of the Respondent because all that they had heard from the informer was that some bad characters were sitting talking to each, other on the bank of the river. We are entirely unable to accept a suggestion made by the learned Government Advocate that when a police officer acts under clause (2) of S. 54, he does so at his own risk if no implement of house-breaking is found in the possession of the person whom he arrests. We do not think that the law ever intended to give a licence to every policeman moving about on the road to search any person at his sweet will merely upon suspicion of bis own which may have no reasonable foundation at all that the said person might have an implement of house-breaking in his possession. The language of the second clause of S. 54 leaves no doubt in our minds that what the law contemplated was that the police officer acting in the exercise of the powers given by that clause must have definite knowledge or at least definite information that a certain person is in possession of an implement of house-breaking before putting that person under arrest. It is thus clear that in the circumstances of the present case the two police constables had no right or authority to arrest the Respondent. It must consequently be held that the Respondent had a right of private defence unless that was taken away by S. 99, I.P.C. which runs as follows:

There is no right of private defence against an act which does not reasonably cause the apprehension of death or of grievous hurt, if done or attempted to be done by public servant acting in good faith under colour of his office though that act may not be strictly justifiable by law.

7. If this provision stood alone, the prosecution would undoubtedly be entitled to argue that the Respondent had no right of private defence, but in considering this provision we have to bear in mini Explanation 1 which runs as follows:

A person is not deprived of the right of private defence against an act done, or attempted to be done, by a public servant, as such, unless he knows, or has reason to believe, that the person doing the act is such public servant.

8. Now in the present case we find that it is admitted that the two constables were not in uniform. Again there is not a word in the whole of the prosecution evidence to suggest that either any one of the two police constables or any one of the two

witnesses ever declared before rushing forward to arrest the Respondent that any one of them was an officer of the law trying to act in the discharge of his duty. We have very carefully perused the evidence from that point of view and we find it established beyond all doubt that what really happened was that the two constables and their two companions simply rushed forward to arrest the Respondent without saying anything to him or without making any enquiries from him. The Respondent could not have had any reason at all to suppose or believe that any one of the four persons who attacked him was an officer of the law. It is thus clear that the Respondent's right of private defence in this case was not taken away by S. 99, I.P.C. We consider it necessary here to point out that it is not only proper and advisable but really necessary that when police officers act in the discharge of their official duty, they should be clothed in their uniform so that the public should always know that they are officers of the law acting in the discharge of their duty. That rule undoubtedly applied to ordinary cases and we can easily conceive of emergent cases in which the police officers might act without being clothed in their uniform, but in such cases it is their duty to take some steps to make it clear to the person whom they intend to arrest that they are officers of the law. If they fail to do so, as the two constables did in the present case, they cannot validly seek the protection of the Court.

9. For these reasons we uphold the finding of acquittal recorded by the learned Sessions Judge and dismiss this appeal. The Respondent, who is in custody, shall be set at liberty forthwith provided he is not wanted in connection with some other case.