

(1879) 09 AHC CK 0005

Allahabad High Court

Case No: None

Empress of India

APPELLANT

Vs

Ganraj and Others

RESPONDENT

Date of Decision: Sept. 4, 1879

Citation: (1880) ILR (All) 444

Hon'ble Judges: Straight, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Straight, J.

This is an appeal by four persons (i) Ganraj, (ii) Basraj, (iii) Jhamman, (iv) Sittu, who were jointly tried and convicted, together with a man named Samara, at the Ghazipur Sessions Court on the 21st June last, for attempting to break into a dwelling-house. It appears that upon the night of the 22nd April of the present year two chaukidars, by name Palak Singh and Musafir Singh, were going their rounds in the town of Zamaniah, about 11 o'clock, when they suddenly lighted on some eight or ten persons apparently engaged in endeavouring to effect an entrance into the house of one Malik Chand by breaking a hole through the wall. These officers at once made efforts to arrest the culprits, calling loudly for assistance the while, but the numbers against them were too great and after a fight and several blows being exchanged the offenders escaped. About dawn of the 23rd April, however, Samaru was caught close to the scene of the attempted crime, and very soon after his being taken into custody he made a statement. On the 28th the charge against him alone was gone into before Mr. Wheeler, the Magistrate, and in his presence Samaru appears to have given two further accounts of the transactions. The result of these was that on the adjournment day the four appellants were placed in the dock with him, and at the conclusion of the proceedings the case was transferred to the Court of Mr. Bustomji. Further inquiry took place on the 6th May, and then all five defendants were committed. Upon the hearing of the appeal it was urged by Mr.

Colvin for the four appellants: (i) that the evidence of their identity as parties to the attempted crime was unsatisfactory, and that Palak Singh and Musafir Singh were untrustworthy witnesses: (ii) that each and all the confessions made by Samaru were inadmissible u/s 30 of the Evidence Act against his co-prisoners, because the statements contained in them did not admit his own participation in the crime, but on the contrary were obviously made to show that he was no party to it.

2. It will be as well to dispose of the last contention first. In order to do so I have very carefully examined each of the statements, five in all, made by Samaru. I need not point out their variations or discrepancies one from the other: even were they admissible I should not think of acting upon them for a moment. But I am clearly of opinion that none of them satisfy the requirements of s. 30, and that they are not confessions in the sense of that section. The charge upon which Ganraj, Basraj, Jhamman, and Sittu were tried in the Sessions Court was one of attempted house-breaking, and unless Samara's statements went the length of admitting that he was at the spot approving of and coinciding in, in fact, in other words, that he was a principal in, the commission of the unlawful act upon which the others were engaged, I do not think that such statements should "be taken into consideration." In every one of them he seeks to fix guilt on the others, and to excuse himself, and I do not, therefore, think these so-called confessions "implicate him to the same extent as they implicate the persons against whom they are proposed to be used,"--Queen v. Belat Ali 10 B.B.L. 453 S.C. 19 WR. 67; see also the other cases cited in the second paragraph of note (2) to the ease of Empress v. Bhawani ILR All. 665. See, however, Queen v. Bakur Khan H.C.R. N.W.P. 1873, p. 213. As I pointed out at the hearing of the appeal, it seems to me that the test Section 30 of the Evidence Act intended should be applied to a statement of one prisoner proposed to be used in evidence as against another, is to see whether it is sufficient by itself to justify the conviction of the person making it of the offence for which he is being jointly tried with the other person or persons against whom it is tendered. In fact, to use a popular and well understood phrase, the confessing prisoner must tar himself and the person or persons he implicates with one and the same brush. I, therefore, think that Mr. Cohin's objection to Samara's statements is a valid one, and they should not have been taken into consideration in the Sessions Court. I have, however, come to the conclusion after a very close and careful examination of all the proceeding's that, in the terms of Section 167 ♦ of the Evidence Act, there was sufficient evidence, without Samara's statements, to justify the conviction of all the appellants, and I accordingly dismiss the appeal, at the same time observing that I do not think they were prejudiced in their defences by the admission in evidence of those statements. I see no ground for interfering with the punishment. The accused were convicted of a very serious offence, which they followed up by violence to the officers of the law, and I think the Sessions Judge very properly proportioned the punishment.

♦No new trial for rejection or improper reception of evidence.

[Section 167:--The improper admission or rejection of evidence shall not be ground of itself for a new trial or reversal of any decision in any case, if it shall appear to the Court, before which such objection is raised, that, independently of the evidence objected to and admitted, there was sufficient evidence to justify the decision, or that, if the rejected evidence had been received, it ought not to have varied the decision.]