
(1935) 02 CAL CK 0001

Calcutta High Court

Case No: None

Moti Lal Roy

APPELLANT

Vs

Emperor

RESPONDENT

Date of Decision: Feb. 11, 1935

Acts Referred:

- Penal Code, 1860 (IPC) - Section 120B, 392, 394

Citation: 164 Ind. Cas. 779

Hon'ble Judges: Panckridge, J; M.C. Ghose, J; Costello, J

Bench: Full Bench

Judgement

Costello, J.

These two appeals are from a judgment of the Special Tribunal of Sylhet, which tried the appellants by virtue of Gazette Notification No. 2517 G. I., dated June 28. 1934, under the provisions of the Assam Criminal Law Amendment Act, 1934.

2. Under the terms of the notification originally five persons were to stand their trial, that is to say, the present three appellants and two others Benoy Bhusan Deb Roy and Digendra Nath Das Gupta The trial began on July 21, 1934, but only Ajit Kumar Chakravarti, Benoy Bhusan Laskar and Motilal Roy were put upon trial by reason of the fact that Digendra Nath Das Gupta had not been arrested, and a pardon was given to Benoy Bhusan Deb Roy under the provisions of Section 9 of the Act, in order that he might be examined as a witness on behalf of the prosecution.

3. All the three persons who were tried, were convicted upon charges made under Sections 382, 394 of the Indian Penal Code and upon a charge made u/s 392 read with Section 120-B of the Indian Penal Code. The Commissioners in passing sentence made these observations: "Ajit was a ring-leader who made all the arrangements. Motilal is younger and appears to have been misled by his elders. On the other hand Benoy Laskar a man with a wife and two children deserves exemplary punishment for inciting youths to act like this. Even if he took no part

himself he deserves just as severe treatment as the leader of the actual robbers. Lastly Ajit was responsible for the aggravation of the offence from Sections 392 to 394 of the Indian Penal Code. So to meet the ends of justice we sentence Ajit to undergo rigorous imprisonment for seven years u/s 394 of the Indian Penal Code and Motilal to undergo rigorous imprisonment for five years u/s 394 of the Indian Penal Code. No separate sentence will be passed against these two accused under s, 392 read with Section 120-B of the Indian Penal Code. u/s 392 read with Section 120-B of the Indian Penal Code, we sentence Benoy Lashkar to undergo rigorous imprisonment for seven years".

4. The story put forward by the prosecution was a comparatively simple one. Ajit Kumar Chakravarti is the nephew of Benoy Bhusan Lashkar, and lived with him at a house in Sylhet. Benoy Bhusan Deb Roy is a lad of about fifteen years of age and he lived in the town of Habiganj. Digendra Nath Das Gupta seems to be a resident of Mymensingh because it is not quite clear whether there was any other man who was described as the man from Mymensingh in addition to Digendra Nath Das Gupta. The prosecution alleged that there was a conspiracy between all the five persons who were originally named in the Notification, having as its object the carrying out of a robbery in the shop of Kanailal Surana, which is situated in that part of the town of Sylhet which is known as Kalighat. In order that this robbery might be carried out, all these five persons are said to have assembled in the house of Benoy Bhusan Lashkar a day or two before the day on which the robbery was to take place, namely, March 2, 1934 On the evening of that day there was a conference held in the house of Benoy Bhusan Lashkar behind closed doors, at which final arrangements for the raid on the shop of Kanailal Surana were arrived at,

5. According to the evidence given by Benoy Bhusan Deb Roy, Benoy Bhusan Lashkar provided Ajit Kumar Chakravarti with a pistol, and the man from Mymensingh with a large knife in order that these weapons might be used to overawe the inmates of the shop. Motilal Roy was provided with a haversack in which the monies intended to be seized, would be carried away. It appears that Benoy Lashkar was living with a girl named Amiya. and it was the intention of the conspirators that the proceeds of the robbery should be put into the custody of this girl. No doubt they thought that she would less likely be suspected afterwards.

6. The approver gave certain details with regard to what took place, as for example, that at the meeting the conspirators were provided with sweets which Benoy Lashkar obtained, and that when they started from the house of Benoy Lashkar, on their expedition, he expressed words of encouragement for the purpose of stimulating them to commit the robbery.

7. The raid was carried out by Ajit Kumar Chakravarti, Benoy Bhusan Deb Roy, Motilal Roy and the person who is described as the man from Mymensingh. They first of all went to a place known as Chalibandar where four bicycles had been kept

ready, the bicycles being used or intended to be used to facilitate their escape after the raid. From Chalibandar the party proceeded to Kalighat. They found on their arrival that there were still a large number of persons in the shop. Accordingly they waited for a while before attempting their raid. Ultimately when there were only four persons left in the shop, it was decided to carry out the raid. It was then half past nine in the evening. The intending robbers then entered the shop. At that time the people in the shop were in the process of making up the accounts. It appears that there were two gadis in the shop, one on the left hand side of the main entrance and the other on the right the latter was described as the western gadi. On that gadi there was a man named Rauthmahal Ba fua who was writing up the accounts, and on the other gadi there was a man named Babulal Surana a relative of the proprietor of the shop and he was in charge of the shop. Surendra De who was a clerk in the shop and a man Abdul Rashid who was a customer were also present on the eastern gadi Babulal Surana and Surendra De were actually counting up the money at the time when the four robbers came into the shop.

8. The evidence shows that Ajit did in fact point the pistol at Surendra and at the same time shouted out "not a talk". The importance of that shout is according to the evidence of the approver, that Ajit was directed to make a shout of that kind at the time when it had been resolved to use threats to the inmates of the shop. The man from Mymensingh had been instructed to flourish the knife with which he had been provided. The other two Ajit and Motilal had been instructed to seize as much of the money as they could. They carried out their instructions and with both hands pounced upon the money which was then on the gadi. The customer Abdul Rashid who was unoccupied at the time endeavoured to seize the robbers and succeeded in catching the hand of Motilal, but Motilal managed to wrench himself away and to make his escape. A certain amount of money was thrown on the floor during the scuffle and subsequently it was discovered that a certain amount of money was missing. The approver managed to put Rs. 8 into his pocket and Motilal had taken away Rs. 20 or more.

9. This robbery was of a kind which in England is known as a smash and grab raid. because directly the robbers found themselves obstructed they made off. The man from Mymensingh turned to the left that is to the West, the other three Ajit, Motilal and the approver turned to the right. They were pursued by Babulal and a number of other persons. When they proceeded a short distance they turned off from the road on which they were running. Two of them Benoy and Motilal took a turn to the left, that is to say in a north-easterly direction and the third man Ajit ran towards the south-east. He was closely pursued by Babulal Surana, and according to the evidence which the latter gave the pursuer actually succeeded at the early stage of the chase, in seizing Ajit round his waist, but was forced to release him because Ajit struck him on the back of his hand with a small knife said to have been a pen knife. The knife was never found. Eventually Ajit was captured by a Muhammadan who had joined in the chase further down the road. Ajit was taken to the shop, and some

short time later both the other two fugitives Motilal and Benoy Bhusan Deb Roy were also brought to the shop, they having been captured by some of the persons who had pursued them.

10. In the shop was found by the clerk Surendra an object which was subsequently identified as being the magazine of a automatic pistol. There is no doubt whatever that the magazine was found in the shop, because it was shown to various people who had assembled there by the time the fugitives were brought back to the shop. This object was shown to a number of persons including to local Pleaders and a gentleman who is described as an accountant. As soon as it was realized that the object was part of a pistol a search was made as a result of which an automatic pistol was found on the road-way or the side of the road-way quite close to the shop; that pistol was undoubtedly the pistol to which the magazine belonged. The large knife which is said to have been provided by Benoy Bhusan Lashkar was never discovered. That is perhaps not surprising seeing that the man from Mymensingh is even now still at large, and it was he who is said to have carried the knife.

11. So far as Ajit Kumar Chakravarti and Motilal Roy are concerned, there can be no possible question whatever as regards their guilt. They were captured while they were still running away from the shop. Ajit Kumar was kept in sight by Babulal from first to last. Molilal and Benoy Bhusan Deb Roy were kept in sight by one or other of the pursuers and they too were brought back to the shop and then and there identified by the inmates as being two out of the four robbers. All the three captives were forthwith handed over to the Police as being three out of the four raiders and a formal information was lodged at the Police Station within an hour or two of the raid, and in that information these persons were named as culprits. [The judgment then discussed evidence and continued.] We are unanimously and definitely of opinion that there was abundant direct and positive evidence more than sufficient to convict both Motilal and Ajit, and that there was no necessity at all to rely upon the evidence given by the approver in order to substantiate the case against those two appellants.

12. The learned Commissioners, therefore, might have contented themselves with the evidence of those witnesses to whom I have referred and asked themselves whether they were satisfied with the evidence given by those witnesses. If they had accepted this evidence there was no need whatever to embark upon a discussion as to whether or not the evidence of the approver was corroborated in so far as it touched upon the case of Motilal and Ajit.

13. The case against Benoy Bhusan Lashkar is somewhat different. He is not charged either under Sections 382, 392 or 394. It was not suggested that he had himself taken any part in the actual robbery. What is said against him in effect is that he was the dominating mind operating in the back ground and had sent forth the four young men to make the raid on the shop of Kanailal Surana. He was accordingly charged merely as being a party to a conspiracy. It is clear law that in

order to establish a charge of conspiracy, it is only necessary to show that the party charged entered into an agreement to do an unlawful act. All that the prosecution was required to do in the present case was to establish that Benoy Bhusan Lashkar had agreed with these four accused that this robbery should be carried out. Actually if the evidence of the approver is accepted, Benoy Bhusan Lashkar did a great deal more than merely enter into an unlawful agreement with the other four persons. He actually gave them instructions. He made the last minute incitements and in fact he had distributed the parts in the drama which was to be played on that evening. He assigned to each of them respective duties in the operation they were undertaking, Ajit was given the pistol, the man from Mymensingh had the knife and Motilal had the haversack for carrying away the booty. The approver Benoy Bhusan Deb Roy has given a clear and circumstantial account of what took place in the house of Benoy Bhusan Lashkar during the hours immediately prior to the setting forth of these men to commit the robbery. If the evidence of the approver is accepted as true, that in fact, itself would be sufficient to convict this man Benoy Bhusan Lashkar.

14. The approver had made a confession before a Magistrate on March 6, 1934, that is to say, four days after the robbery had taken place, and in that confession he had given a detailed account of the whole affair from the time when he was induced to come from Habiganj by Ajit in order to take part in what was then said to be a dacoity, until the time when he was arrested taken to the Thana along with Motilal and Ajit Kumar. It seems clear from the approver's story that he was a young boy living in Habiganj pursuing his studies at school. He came under the influence of Ajit and later on Ajit summoned him to Sylhet for the purpose of taking part in a dacoity. He cycled from Habiganj to Sylhet some two or three days prior to March 2. On arriving at Sylhet he first of all went to the house of a man he knew and spent one night there. Then he spent part of a day and the whole of one night and the whole of the day which was March 2, up to the time he committed the robbery, with the others in the house of Benoy Lashkar. He had discovered where Ajit was living. He found that Ajit was living with his uncle Benoy Lashkar and there he took up his quarters. Some uncertainty exists as to the precise number of huts which comprised this house. The witness Peary Mohan De said that the house consisted of a bed-room and a cook-room. The other witness Sailendra Kumar Chakravarti said that the house consisted of four huts in one of which Benoy Lashkar prepared soap and in another he slept and in the third cooking was done, and the fourth one was dilapidated. There is some indication that Ajit lived in the hut in which soap was manufactured. Whether the house of Benoy Lashkar consists of two or three huts or four huts, seems for the purpose of this case, to make very little material difference, because it is clear that the house was not a very large residence, and it stands to reason that when the approver was staying with Ajit for some twenty-four hours or even longer, Benoy Lashkar must have known all about it. There is evidence which goes to show that the approver did in fact stay in that house, a number of articles were found which obviously belonged to Benoy the approver and

they were satisfactorily identified as such. I have said that if the evidence of the approver is believed it is sufficient to convict Benoy Bhusan Lashkar as one of the conspirators. But it is a salutary rule that the evidence of an accomplice (this approver was of course an accomplice) should be corroborated. It is essential that the Court which has to estimate the value of the evidence of an approver should bear in mind that salutary rule. The learned Commissioners have done so. When a trial takes place before a Judge and a jury it is the duty of the Judge to warn the jury that it is unsafe to act upon the uncorroborated evidence of an accomplice. In the same way when a trial takes place before three Commissioners who are the Judge both of law and of the facts, it is right and proper and indeed obligatory upon them that they should warn themselves that it is unsafe to act on the uncorroborated testimony of the accomplice. The learned Commissioners here did give that warning to themselves, if I may so put it, in other words they had in mind the desirability of ascertaining whether the evidence of approver was or was not corroborated. The question whether the evidence of an accomplice has been sufficiently corroborated is largely a matter for the Court which is trying the case. The learned Commissioners here came to the conclusion that there was such corroboration of the approver's story as would involve Benoy Lashkar in the conspiracy in respect of which he was charged. [The judgment after discussing the corroboration evidence come to the conclusion that there was sufficient evidence to show that there was corroboration of the story told by the approver as against Benoy. The judgment then proceeded,] We see no reason whatever for accepting the suggestion put forward by Mr. Mukerjee that the confession of the approver was not voluntary. We are, however, not really concerned with the confession at all, because the matter passed a long way beyond the confession because the approver gave his evidence before the Court several months later and he was cross-examined on behalf of the defence. The vital thing was that the Commissioners had to consider whether they could accept the evidence of the approver given in the witness-box. The learned Commissioners came to the conclusion that the evidence of the approver was true and that there was no real contradiction between it and what was stated in the confession. This story was perhaps little fuller but that was only natural in the circumstances. Taking the evidence of the approver as true and holding that there was corroboration of it, we unanimously come to the conclusion that the conviction of Benoy Bhusan Lashkar was right.

15. It follows, therefore, that both these appeals must be dismissed.

16. At an early stage of the argument before us, something was said with regard to the sentence. The learned Commissioners accepted the evidence which showed that a pistol was found outside the shop, and they were fully satisfied that a knife was used in order to overawe the inmates of the shop. They, therefore, came to the conclusion that it was not the offence was not one u/s 382 only and that the circumstances warranted a conviction u/s 392. The Commissioners also accepted the evidence of Babulal Surana that he was injured by a knife used by Ajit. They,

therefore, were of opinion that the offence committed by all the four persons who took part in the raid, became aggravated from offences u/s 392 to offences u/s 394 of the Indian Penal Code.

17. It is to be observed that the sentences which were imposed might have been given even if these persons had only been convicted of one of less serious of the offences. As regards Motilal Roy and Ajit Kumar Chakravarti, they were convicted of the most serious of those offences. As regards Benoy Bhusan Lashkar he was sentenced for conspiring to commit an offence u/s 392 of the Indian Penal Code.

18. In our opinion, it cannot be said on any view of the matter that any of the sentences are unduly severe.

19. We are of opinion that the sentences are only open to criticism if at all as being unduly lenient rather than unduly severe. We are certainly not disposed to interfere with the sentences on the ground that they are too severe. The appeal is dismissed.

Panckridge, J.

20. I agree.

M.C. Ghose, J.

21. I agree.