

## Ballan vs The State on 15 April, 1955

**Equivalent citations: AIR1955ALL626, 1955CRILJ1448**

### JUDGMENT

Roy, J.

1. This is an appeal by Ballan son of Hashmat AH aged 27 years, resident of town Nehtore in the district of Bijnor, who has been convicted by the learned Sessions Judge of Bijnor under Section 302, I. P. C. and Section 19(f), Arms Act. He has been sentenced to death under the former section and to one year's rigorous imprisonment under the latter section. Along with the appeal there is the usual reference by the learned Sessions Judge for the confirmation of the sentence of death.

2. Briefly stated the case for the prosecution was as follows. The appellant was wanted in connection with three dacoities alleged to have been committed by him in village Moosepur, Mangal Khera and Sahapur Navada. He had been absconding and he could not be arrested by the police in spite of several raids at his house and in spite of proceedings having been taken against him under the provisions of Ss. 87 and 83, Criminal P. C. On 15-6-1954 sub-inspector Ram Marti Singh, station officer of police station Nehtore received information that the appellant was present at his house. The sub-inspector arranged a raid consisting of Radhey Shiam head constable, Rajendra Prasad constable and several other constables, and he took along with himself five other persons from the public inclusive of Nanhey and Abdul Salam who were residents of that locality. The house of the appellant was besieged.

Sub-inspector Ram Murti Singh along with head constable Radhey Shiam, constable Rajendra Prasad, and Nanhey Abdul Salam and several others entered the house of the appellant. The appellant was lying on a cot inside the 'kothri' facing west, the 'kothri' having been situated by the side of his inner courtyard. On seeing the raiding party inside the kothri the appellant slipped into a grain-bin which was just near the cot. Sub-inspector Ram Murti Singh asked the appellant to come out of the grain-bin. The accused did not come out; instead he fired a shot with a country-made pistol (Ex. 1) at the police party. Ram Murti Singh, who was standing in the forefront, seeing that he was firing towards the police party ducked and luckily saved himself.

The discharge from that pistol hit constable Rajendra Prasad who was at a short distance from the sub-inspector. He was hit on the upper part of the chest. In agony Rajendra Prasad came out of the 'kothri' and fell down dead in the 'sehan' at a distance of about six feet from the door of the 'kothri'. Ram Murti Singh then fired two shots with his service revolver towards the grain-bin. The appellant, it is alleged, came out of the grain-bin at that juncture with the country-made pistol in his hand.

Sub-inspector Ram Murti Singh at great risk to himself held the appellant by his hand and grappled with him in order to snatch away the pistol from him. The other members of the raiding party also

came to his aid in overpowering the appellant. The appellant and the sub-inspector received certain injuries in that scuffle; the pistol was taken away from the hand of the appellant and he was secured. Sub-inspector Ram Murti Singh at once made a search of the grain-bin and found five .12 bore live cartridges inside it. He prepared recovery list.

A fired cartridge was found in the barrel of the pistol. Sub-inspector Ram Murti Singh noticed, "marks of blood" inside the kothri where constable Rajendra Singh was shot at. He also found a cardboard disk inside the 'kothri' and blood in the 'sehan' where Rajendra Prasad had ultimately fallen down. He sent the accused to the police station together with a written report where a first information report was prepared on its basis.

This report was lodged on the same day at 6.45 p.m. within 45 minutes of the occurrence, the police station having been at a distance of two and a half furlongs from the place of occurrence.

On receiving the register of inquest reports the sub-inspector prepared an inquest report; and the dead body was then sent to the mortuary at Bijrior. The injuries of Ram Murti Singh were examined by Dr. R. P. Gupta, Medical Officer in charge of the dispensary at Nehtore on 15-6-1954 at 9 in the night. He had a contusion on the left ring finger, two abrasions on the back of right middle and a swelling on the whole right thumb. Injury No. 1 was caused by pressure between some hard substances.

Injury No. 4 was caused by striking against some hard substance and injuries Nos. 2 and 3 were caused by tooth-bite. The medical evidence further disclosed that these injuries were caused to Ram Murti Singh exactly at the time when the prosecution alleged that they had been caused.

3. The post-mortem examination over the dead body of Rajendra Prasad constable was performed by Dr. V. N. Srivastava on 16-6-1954 at 12 in the day. The deceased was a young man of 28 years. The probable time since death at the time of examination was about eighteen hours. He had a contusion  $3/4" \times 1/4"$  on the right side of the face one inch above the angle of mandible. He had another contusion  $1/2" \times 1/4"$  on the right cheek one inch above injury No. 1.

He had gunshot wounds, nine in number each measuring  $1/3" \times 1/4"$  at the back of neck and right side of upper chest in an area of  $5" \times 4"$ . The first, third and fifth ribs in the posterior side were fractured. The right lung showed four holes covered with blood clots. In the opinion of the doctor death followed shock and haemorrhage due to gunshot injuries.

4. On receiving the special report of the case Circle Inspector Hari Singh (P. W. 11) at once proceeded to Nehtore and reached there the same night at about 12 and he took over the investigation of the matter. He inspected the locality, prepared the site-plan and looked into the grain-bin and found a bullet of the service revolver of 38 bore embedded in one side of the grain-bin and noticed another hole of the same size close to it.

This hole appeared to have been made by the bullet which had passed through and through. He took down the statements of the witnesses on that very night and the matter was ultimately placed in

Court after completing the necessary investigation which resulted in a conviction of the appellant in the manner stated above.

5. The appellant pleaded not guilty to the charge. He denied that he fired any shot at the police party or lie was in possession of the country made pistol and the five cartridges. In the Court of the committing Magistrate he refused to make any statement and reserved his plea for the court of Session, in the Court of Session he contended that he did not know whether he was wanted by police in any dacoity case or whether the police had made any raid at his house in his absence.

He pleaded that he had gone away to Pakistan in 1951 and he returned home only two days prior to this occurrence; that on the evening of 15-6-1954 a police raiding party reached his house when he was sitting on a cot in the 'sehan' of his house; that in that party sub-inspector Ram Murti Singh had a double-barrelled gun; that seeing the police party the appellant ran inside his 'kotha' but sub-inspector Ram Murti Singh fired at him with the gun; that the appellant stood by the side of the wall near the door of the 'kotha' and the sub-inspector entered the 'kotha' and peeped behind the grainbin; that as soon as the sub-inspector looked at the appellant the appellant ran out; that the sub-inspector fired another shot at him with the same gun but he again missed the aim and that shot struck constable Rajendra Prasad who was standing in the "sehan" near the door of the 'kotha'; that Rajendra Prasad constable died as a result of that shot: that sub-inspector Ram Murti Singh grappled with the appellant with the help of other persons and overpowered the appellant and gave him a beating and that the case had been falsely laid against the appellant with the aid of the prosecution witnesses who belonged to the party of one Abdul Rahim who was antagonistic to the appellant.

6. In support of the prosecution case twelve witnesses were examined of whom eight were more or less formal in nature and four were eye-witnesses of the occurrence. The eye-witnesses were sub-inspector Ram Murti Singh, head constable Radhey Shiam, Nanhey and Abdul Salam. The appellant produced in his defence his younger brother Ahmad Husain in order to prove the copy of a complaint made by Ahmad Husain against Abdul Rahim and four others regarding a certain robbery.

7. The fact that constable Rajendra Prasad received gunshot wound and died instantaneously at the spot admits of no doubt whatsoever. This is proved by the evidence of the four eye witnesses; supported by the medical evidence. It is admitted by the appellant himself. The question which we have got to determine is whether Rajendra Prasad was shot at by the appellant, or whether he was hit by the discharge of any gunshot made by sub-inspector Ram Murti Singh.

Before coming to that question it may be stated that the prosecution case was that the appellant was wanted in three dacoity cases and he was a fugitive from law. The police at Nehtore had not been able to arrest him in spite of several raids -and in spite of attachment of his property under Sections 87 and 88, Criminal P. C. The appellant pretended ignorance of these facts in the Court of Session by stating that he had no knowledge of the same. His younger brother Ahmad Husain D. W. 1 clearly admitted that the police raided his house several times to arrest the appellant who had run away and that the police had even made attachment of his property.

Sub-inspector Ali Jan (P. W. 12) who was the station officer of police station Nehtore when those raids and attachment had been made, deposed on oath that Ballan appellant was wanted in three dacoity cases relating to villages Moosepur, Mangal Khera and Sahanpur-Navada and that he had been absconding and he could not be arrested. This witness produced copies of general diary regarding the various attempts which had been made to trace him out during the period from November 1953 to January 1954.

The statement of this witness stood unchallenged and he was not at all cross-examined on the points stated by him. The prosecution case that the appellant was wanted in several dacoity cases and he was absconding and could not be arrested for more than year was therefore proved beyond the pale of all controversy. It was in the evidence of sub-inspector Ram Murti Singh that on 15-6-1954 he received information regarding the presence of the appellant at his house. He, therefore arranged a raid and with a police party and certain respectable persons of that locality he surrounded the house.

The fact that a raid was made at the appellant's house by the police was admitted even by the appellant himself. The case that was set out in Court found expression in the first information report Ex. P. 6 that had been made, by the Sub-Inspector Ram Murti Singh at the police station at the earliest opportunity when he had had no occasion to give it a shape which was something other than reality. In the first information report he stated how the raid had been arranged.

He stated how the party entered inside the house of the appellant. He further stated therein in what position the appellant had been found inside the 'Kothri'. He described in detail the manner in which the appellant entered into the grain-bin and from there he shot at the raiding party when the Sub-Inspector had demanded of him to come out and to surrender. The first information report further indicated that at that moment the Sub-Inspector fired from his service revolver hitting the grain-bin at two places.

It indicated further that when the appellant came out from the grain-bin there was a scuffle and in that scuffle the appellant bit the hand of the Sub-Inspector causing him certain injuries. It further stated that the appellant was ultimately secured and that constable Rajendra Prasad met with an instantaneous death and he fell down into the sehan' alter he was hit inside the 'kothri'. That story was clearly and consistently supported in evidence by Sub-Inspector Ram Murti Singh, head constable Radhey Shiam and the two witnesses Nanhey and Abdul Salam who were not at all shaken in any manner in their cross-examination.

In fact, there was practically no cross-examination of these witnesses; and the only cross-examination that we find was the suggestion put to them that the Sub-Inspector fired with a 12 bore gun and not with his service revolver and that the appellant was not the first to shoot at the raiding party. These suggestions were emphatically denied by all these four witnesses.

We have examined the evidence of these witnesses with care and caution and we see no reason to disbelieve their testimony. The learned Sessions Judge who had had the advantage of marking the demeanour of the witnesses when they were in the witness-box was completely impressed with the

truth of their statements. We see no reason to differ from the view taken by the learned Sessions Judge with regard to these witnesses. The line of defence taken by the appellant was not supported by any evidence whatsoever. And that line, according, to us, was improbable in the extreme. The appellant had admitted that the Sub-inspector grappled with him and overpowered him with the help of other persons.

If the Sub-Inspector was standing inside the "kotha" and the accused had run out or the "kutha", as was contended by him, there could have been no question of the Sub-Inspector's grappling with the accused; for in that event the appellant would have eluded the grasp of the Sub-inspector and would have been caught by other persons standing outside the 'kotha' and not by the Sub-inspector himself. The accused's version was, therefore, totally raise when he said that the Sub-inspector at first fired with his gun when the appellant was inside the 'kotha' and there was another shot with the same gun when he ran out of the 'kotha'.

If the Sub-Inspector had resorted to firing with a 12 bore gun at such close range the appellant would not have escaped being hit with the gun. Furthermore, as we have already pointed 'out, if the version of the appellant were correct, namely, that he eluded the Sub-inspector and ran out of the 'kotha' when the second shot was fired at him, the appellant could not have been caught by the Sub-Inspector and there would not have been a grappling between the Sub-Inspector and the appellant. On the contrary this would have led Lo is having been caught by others of the raiding party.

We are, therefore, satisfied from the evidence of Sub-Inspector Ram Murti Singh, head constable Radhey Shiam and prosecution witnesses Nanhey and Abdul Salam that the incident took place in the manner and in the sequence alleged by the prosecution.

8. It has been contended on behalf of the appellant that on the facts found by the learned Sessions Judge a case under Section 302, I. P. C. is not made out and that if the appellant is at all guilty he is guilty under Section 304A, I. P. C. We are not able to agree to this contention of the learned counsel for the appellant. Section 304A does not apply to a case in which there has been the voluntary commission of an offence against the person.

If a man intentionally commits such an offence, and consequences beyond his purpose result, it is for the Court to determine how far he can be held to have the knowledge that he was likely by such act to cause the actual result. If such knowledge can be imputed, the result is not to be attributed to mere rashness; if it cannot be imputed, still the wilful offence does not take the character of rashness, because its consequences have been unfortunate. Acts which are offences in themselves must be judged with regard to the knowledge, or means of knowledge of the offender, and placed in their appropriate place in the class of offences of the same character.

Where the act is in its nature criminal, Section 304A has no application. In order to attract the operation of Section 304A, I. P. C. the argument of learned counsel for the appellant is founded on the basis that the appellant rushed into the grain-bin and when the raiding party came inside the 'kothri' the appellant was not in a position to see where the respective members of the raiding party

had taken their stand and from inside the grain-bin he shot at random and, therefore, his act was more in the nature of a \* negligent act than in the nature of a criminal act.

We have already indicated that acts which are in themselves criminal, as in the present case they were, would not be acts which may be termed as negligent within the four corners of Section 304A, I. P. C. A rash act or a negligent act is primarily an over hasty act and thus opposed to a deliberate act. In-the present case the act of the accused was a deliberate act and by 110 stretch of reasoning can it be said to have been only a negligent or a rash act so as to attract the operation of Section 304A, I. P. C. alone.

9. It has next been contended that since the aim taken by the appellant was against 'the Sub-Inspector when he shot with the pistol and since the Sub-Inspector was not hit but the constable who was standing behind the Sub-Inspector was hit, the act would not be covered by Section 302, I. P. C. and it would be a case where the provisions of Section 301, I. P. C would apply. Before we proceed to examine the provisions of Section 301 we would like to lay down, what Section 299, I. P. C., says. That section defines the offence of culpable homicide in the following terms:

"Whoever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide."

It may be pointed out that the intention of causing death is not the intention of causing the death of any particular person. The first illustration to Section 299 shows that a person can be guilty of culpable homicide of a person whose death lie did not intend. The same may be gathered from illustration (d) to Clause (4) of Section 300, I. P. C. That illustration says that where A without any excuse fires a loaded cannon into a crowd of persons and kills one of them, A is guilty of murder although he may not have had a premeditated design to kill any particular individual. Section 301, I. P. C. is as follows.

If a person, by doing anything which he intends or knows to be likely to cause death, commits culpable homicide by causing the death of any person, whose death he neither intends nor Knows himself to be likely to cause, the culpable homicide committed by the offender is of the description of which it would have been if he had caused the death of the person whose death he intended or knew himself to be likely to cause."

The scope of this section is clear enough; and that scope was laid down by the Madras High Court in -- 'Public Prosecutor v. Suryanarayana Moorty', 13 Cr LJ 145 (Mad) (A). There the accused, with the intention of killing A (on whose life he had effected large insurances, and in order to obtain the sums for which he was insured) gave him some sweet-meat in which a poison containing arsenic and mercury in soluble form had been mixed.

A ate a portion of the sweetmeat and threw the rest away. One R the daughter of the accused's brother-in-law, aged 8 or 9 years, picked up the sweetmeat without the knowledge of the accused

and ate it and gave some to another little child who also ate it. The two children died from the effect of the poison. But A though the poison severely affected him eventually recovered. The accused was sentenced to transportation for life by the Sessions Judge for having attempted to murder A, but he was acquitted on the count of murdering the two children.

On appeal against the acquittal, Benson and Abdur Rahim JJ. held that the accused was guilty of murder. Benson J. observed that:

"The section does not enact any rule not deducible from the two preceding sections, (namely, Sections 299 and 300, I. P. C.), but it declares in plain language an important rule deducible, as we have seen, from those sections, just as an explanation to a section does. The rule could not well be stated as an explanation to either Section 299 or Section 300 as it relates to both. It was, therefore, most convenient to state the rule by means of a fresh section.

The rule makes it clear that culpable homicide may be committed by causing the death of a person whom the offender neither intended, nor knew himself to be likely, to kill, a rule which though it does not lie on the surface of Section 299 yet is, as we have seen, deducible from the generality of the words "causes death" and from the illustration to the section; and the rule then goes on to state that the quality of the homicide, that is, whether it amounts to murder or not, will depend on the intention or knowledge which the offender had in regard to the person intended or known to be likely to be killed or injured and not with reference to his intention or knowledge with reference to the person actually killed, a rule deducible from the language of Ss. 299 and 300 though not, perhaps, lying on their very surface."

The same view found favour with Abdur Rahim J. Abdur Rahim J. further observed:

"Obviously, it is not possible to lay down any general test as to what should be regarded in criminal law as the responsible cause of a certain result when that result, as it often, happens, is due to a series of causes. We have to consider in each case the relative value and efficiency of the different causes in producing the effect and then to say whether responsibility should be assigned to a particular act or not as the proximate and efficient cause.

But it may be observed that it cannot be a sufficient criterion in this connection whether the effect could have been produced in the case in question Without a particular cause, for it is involved in the very idea of a cause that the result could not have been produced without it. Nor would it be correct to lay down generally that the intention of the act of a voluntary agent must necessarily absolve the person between whose act and result it intervenes."

This majority view of the Madras case was approved of by a Division Bench of this Court in -- 'Mt. Jeoni v. Emperor', AIR 1917 All 455 (B). Taking the facts of the present case we have no doubt in our

minds that the accused was guilty of culpable homicide of constable Rajendra Prasad having regard to the definition of that offence in Section 299, and we think that Section 301 clearly makes the culpable homicide murder notwithstanding the fact that there was no intention actually to commit the murder of Rajendra Prasad particularly. The appellant in our opinion was rightly convicted under Section 302, I. P. C.

10. With regard to the sentence which should be passed upon the accused we can see no extenuating circumstance in the case to merit the lesser penalty provided by Section 302, I. P. C. The appellant was a fugitive from law. He had successfully evaded arrest by the police when he was wanted in three dacoity cases that were hanging against him. He escaped to Pakistan. He returned back to his home.

When the police got information of his presence and raided his house with a view to arrest him he was armed with a country made pistol for which he held no licence. He tried to evade arrest even at this stage and he did not agree to the suggestion set forth by the Sub-Inspector to surrender himself. He shot at the raiding party and hit constable Rajendra Prasad dead. There was no justification for him for that course of conduct. In fact Sub-Inspector Ram Murti Singh exhibited commendable courage and high sense of duty when he at risk to his own life caught hold of him and snatched away the pistol from him. In circumstances such as these death penalty is the only penalty that should be imposed upon the appellant.

11. We, therefore, dismiss the appeal, confirm the conviction and sentence accept the reference and direct that the sentence of death be carried into execution according to law.

12. We do not certify it to be a fit case for appeal to the Supreme Court.