
(1951) 10 GAU CK 0001
In the Gauhati High Court

Elangbam Dharma Singh and Others	APPELLANT
Vs	
State of Manipur	RESPONDENT

Date of Decision : 30-10-1951

Acts Referred:

Penal Code, 1860 (IPC) — Section 148, 149, 302, 307

Citation : (1952) CriLJ 1500

Hon'ble Judges : Lakshmi Narain, J.C.

Bench : Single Bench

Judgement

Lakshmi Narain, J.C.

1. The five convicts mentioned above have filed this appeal from Jail against their conviction and sentences in case No. 20 of 1951 passed by the District Magistrate, Manipur, on 15.9.51.

2. Briefly the facts of the case as alleged by the prosecution are as follows: Shri Kamini Bidhu Singh, D.S.P. who was posted at Awangjiri camp received information that L. Ram Singh and A. Mera Singh who had been Involved in the murder case of Kangamong Basti, "vide" case No. 54 of 1951 u/s 302 I.P.C. were taking shelter at Chiri Haokhul, proceeded there with a platoon of Manipur Rifles in the early hours of 5.4.51. He. reached there at about 6 A.M., after climbing some hill portions towards the place where the above persons were thought to be. When they had surrounded the place from three sides, the wanted persons on the sight of the Police approaching, spread fire from the hut on the hill. The fire was returned and so the exchange of fire continued for about 10/11 minutes. Out of the shelter house some 8 persons came out and tried to get away, the five accused appellants out of them were arrested and the remaining three escaped. Ram Singh, accused, was found in possession of a Japanese Rifle Ex. P-1 loaded with 3 rounds Ex. P-2. One British Rifle Ex. P-3 loaded with 5 rounds Ex, P-4 was in the possession of accused Khomei Singh. A bag containing 13 tin cartridges Ex. P-5 was also recovered lying by the side of Khomei Singh. From inside, the hut in which the accused were taking shelter were recovered clothings Ex. P-6,

some utensils Ex. P-7 and one half of a pair of binoculars Ex. P-8, 2 Daos Ex. P-9, and some other miscellaneous articles. It was known from Nodia Singh on the spot that one of three persons who escaped was M. Nilamani Singh of Kangamong Basti. The party along with the arrested accused and property recovered came back to the camp at about 1 P.M., and then to Imphal and made the usual report on which the case was registered. It is also stated that the hut where the accused were taking shelter was not a dwelling house but a temporary harvest hut. On 7.4.51, Dharma Singh accused gave his confessional statement, Ex. PB, which was recorded by P.W. 2, Shri Setu Singh. M.I.C.

3. All of them were charged for offences committed by them under Sections 148 & 307/149 I.P.C. Apart from this, accused Khomei Singh and Lukram Ram Singh were also separately charged for an offence punishable u/s 19(F) of the Arms Act, They denied the charge and pleaded not guilty. None of them has produced any defence. Relying on the prosecution evidence the learned District Magistrate has convicted and sentenced Khomei Singh and L. Ram Singh accused for 7 years R.I. u/s 307, I.P.C., and 3 years R.I. u/s 148, I.P.C. each, the two sentences to run concurrently; both of the above accused are also convicted u/s 19(F) of the Arms Act and sentenced to 3 years R.I. to run after the expiry of the above sentences. Thus both of the above accused are to undergo 10 years R.I. in all. Khomei Singh accused was convicted and sentenced to 5 years R.I. u/s 307 I.P.C. and 3 years u/s 148 I.P.C. The two sentences to run concurrently. Dharma Singh and Nodia Sineh raised are sentenced to 3 years R.I. u/s 307 I.P.C. and three years u/s 148 I.P.C. the two sentences to run concurrently.

4. On scrutiny of the prosecution evidence, it is found that the five accused appellants were in the hut on the hill along with three others, two of them Ram Singh and Khomei Singh armed with loaded rifles. The fire was opened by them on the Police party on their approach, which was returned. This continued for about 10/15 minutes. They then tried to get away from their presence. A little later 5 of them who are the accused in this case were captured from the jungle on pursuit, the other three escaped. Out of these five Ram Singh and Khomei Singh had loaded rifles with them. This is proved by the testimony of Shri Kamini Bidhu Singh, D.S.P. who is P.W. 1, Shri Yaima Singh A.S.I., P.W. 7, Shri Lal Bahadur, L/NK. Manipur Rifle, P.W. 6. There is absolutely nothing to disbelieve their evidence which is straight forward. I quite agree with the learned District Magistrate that the slight discrepancies between the statements of some of the prosecution witnesses regarding as to who was arrested first or after is quite immaterial. It is as a matter of fact natural under the circumstances that such discrepancies may occur.

5. One of the accused Dharma Singh had given his confessional statement Ex. PB before Shri Setusna Singh, M.I.C. on 7.4.51 i.e., on the third day of his arrest. This statement however is retracted by him at the time of his statement in Court on 16-7-51 about more than 3 months after. He must have had many occasions to appear in a Court before that but it appears he has never complained of it. He

ought to have done so at the earliest opportunity. In his statement before the Court he has stated that he was tortured by the Police and was forced to make that statement, but at the same time he does not even mention in what way the Police had tortured him. The statement of Shri Setusna Singh M.I.C. shows that he was given about 3 hours to think whether he was to make any such statement or not. He was made to understand that he was not bound to make any confession and if he did it, it would be used as evidence against him. Also that he should not state anything because others have told him to say and that he was to tell the truth. The above was told to the accused even after he had 3 hours to think over. He has stated as follows:

My name is Elangbam Dharma Singh. My father's name is Kanhai Singh. I am Manipur Kshitriya. My village is Soipok Khunou. Manipur is my country. The following 8 persons are communists:

We the 8 persons remained hiding in a Naga's lowsang (hut) to the west of Kajikhul. We had four rifles. Three days ago, the police posted at Awangjiri surrounded us in the early morning of Thursday. We tried to run away. After a short running we concealed ourselves in a depressed place. Thangjam Amuba. Aram Singh, Khomei got a rifle each. I don't know who carried the other rifle. The above persons fired 4/5 times. The Police also fired towards us. Then we concealed ourselves in the jungles. The approaching police arrested 5 of us. Three persons ran away with rifles. Two rifles have been recovered with 20 rounds each. Aram Singh was arrested with a Japanese rifle and Khomei with one rifle.

6. He has retracted the confession saying it was made on account of torture and force by the Police. The onus to prove the torture or force was on the accused. He has produced no evidence at all. The intrinsic value of a confessional statement made by an accused to a Magistrate which is recorded with due formalities is not diminished by its mere retraction at a late stage i.e. 3 months after when he was examined after the prosecution witness, on the plea that it was the result of torture or force by the Police which is not proved.

7. This confessional statement is corroborated by a strong and independent evidence of the P.Ws. that these 5 accused were members of the unlawful assembly of 8 persons collected in the hut, 2 of them armed with deadly weapons like rifles for the common object to resist the execution of law or of legal process against them in as much as they resisted their arrest by opening fire on the police party which had gone there for the purpose, is amply proved by the prosecution. It is also clear that two out of them i.e. Ram Singh & Khomei Singh intentionally attempted the death of some of police party by opening indiscriminate firing on them with rifles. Both the above accused attempted to cause death of some of the police party by firing on them knowing to be so imminently dangerous that it must in all probability cause death or such bodily injury as is likely to cause death and also that it was sufficient in the ordinary course to cause death. All the five accused, therefore, are guilty of the offence u/

s 307 I.P.C. committed by 2 of them which was in prosecution of the common object of all members of that assembly. It is also fully proved by the evidence of P.W. 1 Shri Kamini Bidhu Singh, D.S.P., Yaima Singh, Jamadar P.W. 3, Yaima Singh, A.S.I. P.W. 4 and Lal Bahadur P.W. 6 that Ram Singh accused was in possession of a Japanese rifle Ex. P. 1 loaded with 3 rounds Ex. P. 2 and a British rifle Ex. P. 3 was in possession of Khomei Singh loaded with 5 rounds Ex. P. 4. Out of these two accused Ram Singh had admitted that he was in possession of the rifle & the ammunition without licence and that he wanted to sell it to some one in the Naga village. Both the above accused are clearly guilty u/s 19(F) of the Arms Act.

8. I agree with the observation made by the learned District Magistrate that the statement of the accused do not constitute a credible defence. (After going through the defence version the judgment proceeded)

9. The accused in this case have been punished for specific act which constitutes the object of the riot i.e. 307 I.P.C. I don't think it would be necessary under the circumstances to convict the accused in this case for rioting and 148 I.P.C. both. It is not proper though it may not be illegal. Their conviction u/s 307/149 I.P.C. will be sufficient.

10. In view of the above the conviction and sentence of all the five appellants u/s 148 I.P.C. is set aside. To this extent alone the appeal is accepted, in other respects, it is rejected. The result is that the conviction of all of them u/s 307/149 I.P.C. and of Ram Singh and Khomei Singh u/s 19(F) Arms Act is maintained. The sentence passed against Ram Singh and Khomei Singh accused under Sections 307 I.P.C. and u/s 19(F) of the Arms Act are to run as ordered by the District Magistrate i.e. the sentence in each case to run after the expiry of the other.