

(1928) 06 PAT CK 0017

In the Patna High Court

Emperor

APPELLANT

Vs

Vidyasagar Panda and Others

RESPONDENT

Date of Decision : 13-06-1928

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 307
Penal Code, 1860 (IPC) — Section 149, 306

Citation : AIR 1928 Patna 497

Judgement

1. This is the judgment of the Court in a reference u/s 307, Criminal P.C., by the Sessions Judge of Patna. There are ten persons accused to which the reference relates and there were on trial with them six others. They were all charged under Sections 149 and 306, I.P.C., with being members of an unlawful assembly whose common object was to abet the suicide of Sampati Kuer at Barh and with abetting the woman's suicide. Six of the accused were acquitted by the jury and the Sessions Judge sees no reason to dissent from their view. As to the others the Judge dissents from the verdict of the jury and refers the case to the High Court.

2. The accused persons to which the reference applies consist of two separate groups and I may say that yesterday I took advantage of a visit of inspection to the jail to see these accused persons. I had them examined by the medical superintendent who gave me his views upon their ages and my inspection of the prisoners confirms the opinion which has been arrived at by him.

3. The first group is that which comes from Berhna, a village two miles south of Barh. It consists of one Murlidhar Pande, a Brahmin, who is the brother of the deceased girl. His age is 17 years. Then there is one Jagdeo Pande who is also a Brahmin and a distant relative of the deceased woman. His age is 20 years. Then there is one Raghu Singh who is a Bhumiar Brahmin who is no relation to the others. He is a religious enthusiast and is aged 40. There was also a Brahmin named Gaya Pande who was acquitted with the concurrence of the Judge.

4. The next group is that which comes from a village named Sartha twenty miles

south-west of Barh, which consists of Vidyasagar Pande, a Brahmin, who is the brother of the deceased woman's deceased husband, whose is age 16, Lachman Pande whose age is 48, Sahdeo Pande whose age is 25, and Hardeo Pande, aged 26 these last two Sahdeo and Hardeo are relatives). There is also Kesho Pande who is a Brahmin aged 42. Then there is a woman Mt. Lakhia a Kaharin who was the deceased woman's servant. Her age is 35.

5. There is also in addition to these two groups a Dusadh named Ramautar whose age is 36 and his part in this story will be related in this judgment.

There are thus seven Pande Brahmins, a Bhumiar Brahmin, a woman Kahar, and a Dusadh, and there were also a Brahmin and four Kahars or bearers who were acquitted by the jury with the approval of the Judge.

6. The deceased woman Sampati Kuer was the daughter of one Keshu Pande of Berhna who died ten or twelve years ago. At the time of her death in November last she was aged about twenty year's. Ten or twelve years ago she was married to one Sidheswar Pande of Sartan but she continued to live at her father's house. In August last Sidheswar fell ill. Sampati went to his house to nurse him and she nursed him until his death on 21st November last. It would appear that; the marriage was never consummated. The young widow was a pious, gentle Hindu girl of high caste. She was pardanashin and was possessed of such rudiments of education as that condition permits. She had no father; she had no sufficient male protection. Her only male relative who was of age was a man named Kuldip, her uncle, who has not appeared in these proceedings at all and would appear to take no interest in them, and she was left therefore with only the weak-minded superstitious boy brother. What a victim she presented to those who were to profit by her death.

7. The story of the crime we are now investigating begins on the early morning of 22nd November when a party of persons who arrived late the night before were found resting in a shed in the compound of the Sub-divisional Officer's Court at Barh. This party carried with them a khatoli on which rested the body of the deceased Sidheswar. They were taking it to the burning ghat on the banks of the Ganges about two miles further to the north. At 5 o'clock in the morning on the 22nd a Rajput constable Ramayan Singh found the party consisting of about 15 or 16 persons in all. He identified all the accused save Raghu Singh and the driver Ramautar, among them. The corpse was lying in the khatoli and sitting by the side of the corpse Was the widow Sampati. The constable, was told of the intention that the woman should become sati. Knowing that this was contrary to law he went to the police station about a mile away and half way on the journey to the ghat, and there he told the writer head constable Nurul Haq of what he had seen, He and the writer head constable and constable Mukh Lal Singh returned to the shed to expostulate with the woman and her companions. By that time it was getting light. The persona were all there and they were all identified and their names were taken. The woman was still sitting on the khatoli and the three constables reasoned with them. They pointed out that the

proposed sati was unlawful but these men declined to listen, Then the writer head constable fetched the treasury jamadar Mahabir Tewari who was a Brahmin and the constable Lachmi Singh and they also further reasoned with the party, but the party refused to listen to reason. Then the head daroga Lalbehari Lal arrived. He joined in the attempts at persuasion and the police threatened to detain the body and prosecute the party. They said they would detain the body until it was putrid.

8. Thereupon the poor, brave weak minded lady was convinced of the foolishness of the whole proceeding and got off the khatoli and the corpse was sent off to the ghat carried by the four Kahars and accompanied by all Pandes save Sampati's brother Murlidhar, the youthful relation Jagdeo, and, it appears, also the man who was acquitted, Gaya Pande. The funeral party vanished along the bund road towards the ghat. The lady was now left alone with her maid, her feeble-minded brother Murlidhar and the youth Jagdeo and she was willing to go to Berhna. The men called an ekka and the ekka was conducted by the accused Ramautar Dusadh whose position in this case is peculiar and I shall have further occasion to refer to it. She thought, we have no doubt, that she was going back to her dead father's house and the police thought that they had saved the situation. They did not reckon on the malignant ingenuity of the Pandes who had gone off with the body.

9. In a, few minutes back came the miserable boy Vidyasagar undoubtedly sent by the elder members of the party. The three youths got Sampati and her maid into the ekka ostensibly to take her to Berhna. The police followed with a gradually increasing crowd and the crowd was shouting the familiar cry of "satimata-ki-jai. " Some 900 yards north-east from the shed in which the body had rested the Bakhtiarpur road is crossed by a road which leads from the bund road south-east to Berhna and at this point the ekka should have turned down towards Berhna. But this would have spoiled the Pande's plan So leaving the corpse to pursue its unresisting way to the ghat along the bund road carried by the docile kahars they came down by the cross roads further north and joined the crowd and re-captured their victim. About a mile from the shed the bund road and the Bakhtiarpur road converge at the thana and here the crowd had increased until it numbered about four or five thousand persona and all the Pandas were present and close to the ekka. Again the police endeavoured to reason with them. They consisted now of the Inspector Harnandan Singh, two jamadara and 15 constables and they tried for half an hour to persuade Sampati to return to her home and the Pandes to allow her to return to her home. Sampati said she was about to become a true sati, that is to say she believed that when she reached the funeral pyre miraculous fire would appear to destroy her and the body of her husband on the pyre. That she believed in or had been told of the physical agony she was to endure we not merely doubt but we disbelieve.

10. However the Pandes in pursuance of their scheme said that they would take her to Berhna and they succeeded in deceiving the police into the idea that, that

was their intention and Ramyan Singh and Mukhlal were told to escort the ekka on to Berhna, Sampati, the maid and Sampati's brother Murlidhar were on the ekka; Vidyasagar and the other six Pandes followed on foot. The driver led the ekka, and the party now went south again retracing its steps. At about 400 or 500 yards from the thana it came to where the road has a fork back to the north-east to Gulabagh and the ghat, and here the Pandes intervened and forced the driver to lead it up the fork. The police were pushed aside. They felt that they were helpless against the Pandes and the fanatical mob and the two policemen went back to the thana and informed the Inspector. The alarm bell was rung and the Inspector and the writer head constable and 16 or 17 constables were hurriedly mobilized and they went to the ghat whither the scene now changes.

11. The body had arrived before the Pandas and the girl who was to be sacrificed. It was carried by the four Kahars and accompanied by the Bhumiar Brahmin Raghu Singh who was doubtless deferentially obeying his revered masters, the Pandes. The corpse arrived an hour before the ekka and the Pandes, and the Inspector and the town Jamadar Kedar Nath Panda tried to get Raghu Singh to burn the corpse before the rest of the party arrived. It was clear that he was in the plot because he refused to do anything of the kind. When the ekka arrived the widow alighted. She bathed in the Ganges and made her pathetic toilet with the assistance of the maid supervised by Murlidhar and the old Panda Lachman. They held up the screen for her. Lachman took her ornaments, Lachman supervised the cutting of her nails and the dyeing of her feet. She seated herself on the pyre prepared by the three boys and by Lachman. Then Raghu and the young Pande Hardeo performed the easy and relatively unimportant duty of putting the corpse upon the pyre.

12. Now, note the situation. If the Pandes themselves set fire to the pyre they were under the observation of the police and they knew perfectly well that their necks would be in the hangman's noose. Moreover, if they themselves set fire to the pyre there would have been no miracle of heaven sent fire. All the merits would have belonged to Sampati alone and not to her religious assistants at the supernatural phenomenon. To satisfy the Pandea and their dupes, the crowd, fire must appear as though by magic. Moreover, the poor girl herself expected the fire to be miraculous and the Pandes were prepared for the emergency. It is true that her toilet was performed by Lakhia, but it was supervised by Lachman and by the boy Murlidhar under his directions. When she took her seat her left hand was concealed in her draperies. She took the corpse on her lap and its head lay on her left thigh near that concealed hand. Did the poor girl know what was to happen? She only expected the divine fire to appear. A moment later flames burst from her clothing and the cause of those flames is no matter of surmise as we are asked to believe. We are not fools. Not for one moment: at the ghat had she been left alone. She had been closely surrounded. The trick was simpler than any conjurer's trick at a country fair and it was the Pandes who performed it. At the torture of the flames the poor creature leapt from the fire and rushed into the river. Now the Pandes were in a very serious difficulty. If the woman were

rescued the trick was revealed and the hangman's rope again dangled in front of them. They could not start the fire again; they could not repeat the trick. The apparatus was gone and therefore Sampati must drown. They threw her the corpse which slipped out of her grasp and went to the Ganges crocodiles, but no such merciful fate attended Sampati. They shouted to her to drown herself. Some police put out in a boat and tried to rescue her. They were threatened and told that they were not to stop her; she was told to drown herself.

13. However, with the assistance of the police she was ultimately helped ashore in a shocking condition. She went to lie down under a tree by a temple 60 paces away and then began that which was the first-fruits for which the Pandes had been waiting, a stream of coins began to flow which they greedily picked up. After some hours a doctor came. He tried to give the poor suffering woman an injection to relieve her agony; he was driven away. The police endeavoured to take her away to the hospital; they were driven away. For two days and two nights she lay there in agony. On 24th the Subdivisional Officer who had been away on tour arrived with his armed police and swept the rabble aside and took the poor girl to the jail. On 25th her sufferings came to an end. We are told that on the banks of the Ganges there is a little shrine to perpetuate her memory.

14. What are the defences of these people First, it is said that we should respect the verdict of the jury because they were learned men. Learning connotes neither wisdom nor courage and, in our opinion, these jurymen were deficient in both these qualities, the qualities which are necessary to a jury, the qualities which are necessary to citizenship.

15. We now turn to certain matters of law. Mr. Pugh rightly quoted from the judgment of Macpherson, J., in *Queen v. Sham Bagdi* [1873] 13 B.L.R. App. 19, which was quoted and followed in *Emperor v. Swarnamoyee Biswas* [1914] 41 Cal. 621, and it is true that the verdict of a jury has more weight than the opinion of assessors and should not be set aside unless no sensible man. could have arrived at their verdict, particularly in the case of a verdict of acquittal. In the light of this principle we approach the defences offered. The first defence offered is a general defence of law. It is said that these people were expecting a miracle; and there is no evidence to show that anyone in particular fired the pyre, and with that state of mind the pyre having caught fire and the woman having been burnt they cannot be convicted u/s 107. It is difficult to treat this defence seriously,. but the answer is that they are charged with assisting the woman in her acts to meet a voluntary death. The method of destruction resolved on for the suicide was fire and the method of ignition of the fire whether miraculous, whether self-applied or whether applied by others is totally immaterial. The contention is not worthy of further consideration and we follow the judgment in the case of *Emperor v. Ram Dayal* [1914] 36 All. 26, which is conclusive on this point.

16. On the facts, and the identity of the accused Mr. Pugh on behalf of Vidyasagar, Lachman and Hardeo, all of the Sartha party, could offer no defence

beyond the general observations above. Mr. Manohar Lal, on behalf of Kesho Pande and Sahdeo Pande, urged some points on the identification of these two. Sahdeo is an agnate of Hardeo as he himself admits and he comes from Sartha. The denial of his presence is supported by no evidence whatsoever. Kesho says he arrived after the burning of the body. Mr. Manohar Lal did not attempt to deny that both were at the ghat; indeed he says because they were there they were accused. On the question of mere probability they come from the same village of Sartha twenty miles away, and there is no satisfactory reason except this incident to account for their presence. The constable Ramayan Singh (P.W. 5) identified them at the shed as also did Mahabir Tewari (P.W. 14), the head constable of the treasury guard. Numerous witnesses identified them at the thana. Then followed some weak criticism to the effect that no mention is made of their names in the station diary on the 22nd. But it mentions none of the accused.

17. Then it is said that there were discrepancies in the evidence of the writer head constable as to whether he followed the ekka from the shed the whole way to the thana. It is said that as these two men had been sent with the corpse they could not have joined the party with the ekka which they undoubtedly did accompany to the thana. The answer is that there was a huge crowd and they had plenty of opportunity to join up by the two cross-roads and the writer head constable undoubtedly accompanied the akka in the final part of its journey to the thana. Sub-Inspector Lal Behari Lal (P.W. 20) identified all of them and took their names at the ghat.

18. Then a whole list of observations was made to show that the entire story up to the incidents at the ghat was invented by the police. That is not worthy of one moment's attention. However lacking in judgment the police may have been in neglecting to take steps at an earlier stage which might have stopped this deplorable incident, not one word can be said against the evidence which they have given which, in our opinion, was given with conspicuous honesty and courage and reflect a credit on their service.

19. By the learned, moving and interesting address of Mr. Jayaswal whose knowledge of Hinduism is unrivalled in this province and is acknowledged all over the world we were re-assured in our view that sati has long been discarded by all pious Hindus with any pretence to the respect of their fellows, and Mr. Nandkeolyar frankly described it as a relic of brutal barbarism.

20. We must now consider what punishment should be awarded these people. I will first deal with the driver Ramautar Dusadh. His case requires special attention because his defence was gravely hampered. The main object, perhaps I can only speculate, of those who were responsible for financing the defence was to provide for the safety of these Pandes. This man was a Dusadh, and perhaps of no particular account. He should have been separately defended, but the provision of a separate defence for him would have involved serious difficulty for the other accused persons, because his defence, if properly put as I shall indicate

by the evidence, is that he was under the impression that he was called upon to drive the ekka back to Berhna. The actual owner of the ekka distinctly states in his evidence that he was approached by a party of Hindus including Ramautar Dusadh who said that they wished him to conduct a party to Berhna. For some reason he did not wish to do that and so he was thrust off his vehicle. Ramautar Dusadh seized his whip and ha took the ekka to the shed and we know that it was the intention of the party at that stage, the intention at any rate of the poor woman, to go to Berhna. He says himself in his examination that in the crowd a constable seized him, asked him if he could drive and told him to drive up to the ghat. That last part of his story is not true, but such part as is believable is entirely consistent with the evidence of the man who really owned the ekka. In our view. Ramautar Dusadh believed that he was going to drive the ekka to Berhna and he was compelled by the Pandes to drive to the ghat. It would have been difficult and it was difficult as I pointed out to Mr. Nandkeolyar to set up that defence in view of the fact that his defence was conducted jointly with those who said that there was no plan to go to Berhna at all. As I say, he should have been defended separately. It is right that he should be convicted because he should have refused, when he learned the real nature of the trick, to conduct the ekka further. The justice of the case will be met by sentencing him to rigorous imprisonment for one year. The period of imprisonment already undergone by Ramautar will be included in this period of one year.

21. As to the woman Lakhia: her condition mentally is hopeless. She was entirely dominated by the situation, by her superstition, by her ignorance and it is conceivable that she believed and had been made to believe in this lie about the miraculous fire. The justice of her case will be met by sentencing her to rigorous imprisonment for one year. The period of imprisonment already undergone by Lakhia will be included in this period of one year.

22. As to the boys Murlidhar and Vidyasagar, they are of an age when it is still possible that in better surroundings they may be freed from the grossness of the superstitions in which they were reared. We intend to protect them for a considerable period so that at the time when they arrive at an age when they can think for themselves they may become men and may discard these beliefs of savages. They will be sentenced to rigorous imprisonment for five years. As to Jugdeo ha is an older youth and he should have exercised more intelligence. We believe, but we are not certain, that be was in this plot also, but we consider that the justice of his case will be met by sentencing him to rigorous imprisonment for seven years.

23. As to the Pandes, Lachman, Hardeo, Sahdeo, and Kesho, and the Bhumiar Raghu Singh, they are sentenced to rigorous imprisonment for ten years.

24. This is our judgment firstly that such evildoers may be punished: secondly, that an innocent girl may be avenged so far as we can avenge her; and, thirdly, in order that those who will not learn by reason may be taught by fear. We can only punish the body. I do not pretend to know if there be any survival after this

life is finished, but if so and if God be just and merciful in the sense that we very imperfectly understand justice and mercy, then such of these men as survive their earthly punishment may well go on humble pilgrimage to Sampati's flower decked shrine and with ashes on their heads cast themselves down and invoke her gentle spirit to intercede with the Almighty to save their guilty souls from everlasting damnation.