

(1957) 10 RAJ CK 0003

In the Rajasthan High Court

Case No : Criminal Appeal No's. 196 of 1956 and 49 of 1957 and Cri. Revision No. 57 of 1957

Tejsingh and Others

APPELLANT

Vs

The State

RESPONDENT

Date of Decision : 10-10-1957

Acts Referred:

Penal Code, 1860 (IPC) — Section 107, 306

Citation : AIR 1958 Raj 169 : (1958) CriLJ 967

Hon'ble Judges : K.N. Wanchoo, C.J.; D.S. Dave, J

Bench : Division Bench

Advocate : Shrikishanmal, for the Appellant; L.N. Chhangani, Government Advocate, for the Respondent

Judgement

K.N. Wanchoo, C.J.—These two appeals and the Criminal Revision are connected and we propose to deal with them in one judgment. Appeal No. 196 of 1956 is by Tejsingh and six other accused who have been convicted under Sections 147, 306 and 342, Penal Code and sentenced to six months' rigorous imprisonment. Appeal No. 49 of 1957 is by the State against the acquittal of Balchand and four others of these offences. The revision is against Tejsingh and the other appellants of Appeals No. 196 of 1956 for enhancement of sentences passed on them.

2. The prosecution story was briefly this. Sub-Inspector Heersingh of Thana Bhimsar received information on 12th of August 1955 that Todarram Brahmin of village Bamania was ill and about to die and that his wife Mt. Sarswati was likely to commit Sati on his death. In consequence of this information Sub Inspector Heersingh along with a number of police constables came to this village to stop Mt. Sarswati from committing Sati. He made enquiries from Mt. Sarswati and her relations on 13th of August 1955, and they apparently put him off by saying that there would be no Sati, and that the rumour which was prevalent in the neighbouring villages was false. The Sub Inspector however was not satisfied

with this denial and therefore continued to stay on in village Bamania on 14th, 15th and 16th of August 1955. Todarram died at 1 P. M. on 16th of August 1955. The Sub-Inspector immediately went to Todar-nam's house and found the people crying. Even at that time he seems to have been assured that there would be no Sati. At about 2.30 P. M. or 3 P. M. the Sub-Inspector came to know that Mt. Sarswati would become Sati and that arrangements were being made for the purpose. He also came to know that people from neighbouring villages were also collecting in Bamania for that purpose. In consequence, he went to the house of Todarram again. At that time he found Daluram, Jeeyaram, Maluram, Balchand and Askaran at the house. The first three are brothers and the last two are sons of Todarram. Besides these, Padmaram, Udaram, Gidaram and Rawatsingh accused who have been convicted were also present along with two or three others. The Sub-Inspector came to know that information had been sent to neighbouring villages to collect people. He enquired from these nine persons and a few others who were there whether Mt. Sarswati would become Sati and they said yes. The Sub Inspector then enquired from Mt. Sarswati and she said nothing in reply. The Sub Inspector tried to reason with these people, but they said that Mt. Sarswati would certainly become Sati, as this news had already gone about all over the villages and she was bound to honour it. Thereafter these persons started shouting "Sati-ki-iai". Other people also, who had collected near about the house, took up the shouts and repeated them after these nine. It may also be mentioned that Tejsingh Bhoor-singh Rajput and Bhooraram Jat of village Chariya, who had also arrived joined these nine persons in shouting slogans and in encouraging the idea that Sati should take place. Soon after that, the funeral procession started from the house of Todarram and Mt. Sarswati, dressed in new clothes and wearing her jewellery, led the procession. The Sub-Inspector tried to stop the procession, near the school on the way; but by this time however there was crowd of more than 1500 people and they were shouting "Sati-mata-ki-Jai-ho, Sati hona Dharma hai". The Sub inspector was unable to stop the procession and about 100 to 150 people out of that procession surrounded the police party, with the result that the procession passed on and the police party could only follow behind surrounded by these persons. Eventually the dead body of Todarram was put on the funeral pyre and Mt. Sarswati sat on it. The five relations, namely Balchand, Askaran, Daluram, Maluram and Jeeyaram took special parts which have been described by the various witnesses in setting fire to the funeral pyre. The whole thing was over in half an hour and the dead body as well as Mt. Sarswati were burnt. Thereafter the crowd went away leaving the police, which had not been seriously molested except that it had been surrounded on all sides and not allowed to interfere with the funeral pyre and to stop Mt. Sarswati from immolating herself. The report of the incident was immediately sent by the Sub-Inspector to Thana Bhimsar. He had already sent a telegram before the funeral procession started to the authorities concerned informing them of the seriousness of the situation. The Circle Inspector arrived on the scene the same night, but long after Sati had taken place. He therefore took over investigation and eventually these twelve persons were sent up for trial

under Sections 306, 342 and 147 of the Indian Penal Code.

3. Of the twelve accused, the case of Balchand, Askaran, Maluram, Daluram and Jeeyaram was that they had been arrested on the 15th of August 1955 and were not in the village at all when Todarram was burnt. The other seven accused said that they were not present in the village at all when the incident took place. All the twelve thus took the plea of alibi, and some evidence was produced in support of it.

4. The prosecution relied on the evidence of three eye-witnesses, namely Suganchand and Dule-singh constables and Sub Inspector Heersingh. The learned Sessions Judge has believed the evidence of these three witnesses and it was because he believed the evidence of these witnesses that he convicted seven of the accused. It seems Strange in the circumstances that he should have disbelieved these very witnesses with respect to the five relations of the deceased. We may here refer to a sentence from the judgment of the learned Sessions Judge to show that he was practically accepting the evidence of the three eye-witnesses in toto. This sentence is as follows :--"I have already cleared that I see no reason to disbelieve the account of the incident given by the police officers as above." So we have to approach the appeal by Tejsingh etc. as well as the appeal by the State with this background, namely that the trial court has believed the evidence of these three eye witnesses.

5. Learned counsel for Tejsingh and others however has attacked the evidence of these three witnesses and also the view of the trial court that the witnesses have told the truth. The main attack is that these witnesses are all police men and no so-called independent evidence is forthcoming. It is urged that these police men were suspended because of dereliction of duty because they were unable to prevent Sati and, therefore, it is said that they are now perjuring themselves. We have not been able to understand why these police officers should perjure themselves simply because they were suspended. Such perjury will not help them so far as their suspension is concerned. Besides, the whole story was given by the Sub. Inspector Heersingh long before his suspension in the first report and the evidence that has been led is in support of the first report. In these circumstances, the suspension of these police officers for dereliction of duty has in our opinion nothing to do with the veracity of their evidence. As to the charge that no so-called independent witnesses were examined, it is enough to say that in the circumstances of this case, we could not possibly expect any villager to come and give evidence against their fellow villagers. In particular, it was urged that Mohammad Yashin Patwari could, at any rate, have been produced as he was mentioned in the first report being present when the Sub-Inspector tried to stop the funeral procession near the " school. It would have been better if the Patwari had been produced; but we can understand that even in the case of the Patwari, he may not have given evidence one way or the other in a case of this kind, so that he might avoid unpopularity with the whole of the village. We are therefore not prepared to disbelieve the evidence of these three police officers

simply on the ground that they have not been corroborated by so called independent evidence. In this connection our attention was drawn to *Habeeb Mohammad Vs. The State of Hyderabad*, . It is enough to say that the circumstances of that case were entirely different and the observations in that case about withholding of material witness have no application to the circumstances of this case.

6. Now as to the evidence of these three witnesses, we may point out that nothing has been brought out in their cross-examination to suggest that they had any reason to implicate any of these twelve accused falsely. The evidence that they have given is consistent with the first report and is also consistent with the statements of each other with only one or two minor discrepancies here and there. We have therefore no hesitation in accepting their statements as true and as showing what really happened on the 16th of August 1955 when Mt. Sarswati became Sati. That evidence bears out the story which we have given above and which was set out in the first report. We do not think it necessary to mention the evidence of these witnesses in detail. Suffice it to say that that evidence proves beyond all doubt what we have set out above as the prosecution story.

7. It is urged that these police men could have done something more to stop Sati taking place and it was suggested to them in cross-examination that they should have shot at the villagers or made a lathi charge. So far as lathi charge is concerned, there were only two police constables with lathis and it would be ludicrous for two men to charge with lathis on a crowd of 1500 or more. As to their using guns, all that we need say is that these police officers were rather in a difficult situation, with a man dying and a woman threatening to become Sad and we cannot imagine what would have happened if these police officers had started shooting at anyone. Nothing short of arresting Mt. Sarswati would, in our opinion, have stopped Mt. Sarswati from becoming Sati that day. It may or may not be an error of judgment on the part of the Sub-inspector not to have arrested Mt. Sarswati; but that is the best that he could have done.

8. In this connection, we may also dispose of that part of the defence of Balchand, Askaran, Daluram, Maluram, and Jeeyaram in which they said that they had been arrested on the 15th of August and taken to the Thana and were not in the village when the funeral took place. The learned Judge has not believed this story and the evidence in support of it. We entirely agree with him. The evidence on this point of two or three witnesses is so absurd that it is not worth a moment's consideration. It is enough to point out that if the Sub-Inspector was to arrest anybody at all and if he came to the conclusion that some arrest should be made, the first person whom he should have arrested was Mt. Sarswati and that would have avoided all trouble. The Sub-Inspector has denied that he ever arrested anybody and it seems to us that it never struck him to make any arrest; for there is no doubt that if such a thing had crossed his mind, the person he would have arrested would be Mt. Sarswati. The story therefore of these five accused Balchand etc. that they were not in the village as

they had been arrested is false. We have no reason to doubt the statements of the three witnesses to the effect that they were in the village and were taking a prominent part in the funeral procession and in cremating Todarram and in setting fire to the pyre on which Mt. Sarswati was sitting.

9. The learned Judge has not accepted the evidence of the Police officers with respect to the part played by these five accused on the ground that he thinks that the police party was not in a position to see what was actually done by these persons when the funeral pyre was lighted. All that we need say is that if the learned Judge was going to disbelieve the statements of these witnesses as to these five accused on this ground, the matter should have been put to them. The evidence is that the police party was at a distance of 15, 20 or 25 paces from where the funeral pyre was burning. These policemen were certainly surrounded by 100 or 150 people to immobilise. The evidence also is that the funeral pyre was surrounded all round by the few thousand people who had come to join in the procession. But the evidence also is that the funeral pyre was lighted at a place which was little higher than the place where the police party was surrounded; so that it would be easier for the police party to see what was happening near the funeral pyre. Not a single question was put to these witnesses to suggest that they could not see what was happening near the pyre. Sub-Inspector Heersingh definitely stated that he could see what was happening near the pyre because it was at a high level and people were moving about. There is no evidence that all this crowd of 3000 or 4000 people which was surrounding the pyre was packed in the distance of 15 or 20 paces between the Police party and the pyre. There is also no evidence that this was a fixed wall of people which did not move this way or that during the whole time the pyre was burning. In these circumstances, if these three witnesses who have otherwise been believed by the learned Sessions Judge said that they saw what part was played by each one of these five, namely Balchand, Akaran, Daluram, Maluram and Jeeyaram, there is no reason why they should not have been believed. The learned Judge went wrong in disbelieving this part of their evidence when he has believed the other part. We are therefore of opinion that the prosecution story as given in the first report with respect to all the twelve accused has been proved beyond any manner of doubt by the evidence of these three witnesses.

10. It only now remains to consider what offence has been brought home to the various accused. The most detailed evidence on this point is in the statement of Suganchand constable. He says that after Todaram's death, he went towards Todaram's house at about 4 p. m. He then heard the five relations as well as Udaram, Padmaram and Gidaram talking, which suggested to him that Sati was going to take place. He therefore, informed the Sub-Inspector who arrived there soon after-wards. The Sub Inspector was enquiring from these persons when Bhoorsingh Rajput, Tejsingh and Bhooram Jat also arrived. The Sub Inspector tackled all these twelve persons. These persons then said that Sati was bound to take place as so much rumour had gone about the villages. Then they started shouting "Sati mata ki Jai", and started from the place with the pyre. Mt.

Sarswati wearing new clothes was going in front and these persons went in a procession with her and this procession was joined by more and more persons as it proceeded further. In these circumstances, we have no doubt that all these persons who joined that procession were aiding Mt. Sarswati in committing Sati. Section 306 of the Indian Penal Code provides punishment for abetment of suicide. One of the ways of abetment in Section 107 is intentionally doing of any act or illegal omission, abetment also includes instigation. It may be that these persons did not directly instigate Mt. Sarswati to commit Sati but once she had made up her mind to commit Sati, their actions throughout by applauding her decision were meant to encourage her and to keep her resolve fixed and were thus a kind of instigation. We are further of opinion that those people who were in that procession, including the twelve accused, were throughout intentionally aiding Mt. Sarswati in her decision to commit suicide by taking her with the bier to the cremation ground. They were further aiding her inasmuch as they prevented the police from interfering, and about 100 or 150 of the crowd had surrounded the police in order to make it useless for purposes of preventing Sati. There is no doubt that the whole crowd which started from Todaram's house was animated with the object of aiding Mt. Saraswati in her desire to commit Sati and their whole object was to prevent the police from interfering with Mt. Sarswati's action. The leaders of this crowd were the twelve accused who were present at the house of Mt. Saraswati when the procession started and were the first to raise slogans like "Sati mata ki Jai" and so on. This crowd went on swelling and everyone who joined it knew very well what was the intention of the people who were already in it and must have partaken in that common object. When this crowd reached near the school, a part of it in prosecution of their common object surrounded the police so that it might not interfere with the funeral. The remaining part went on to the place where the cremation was to take place followed by those who had surrounded the police. We have no doubt therefore that the whole crowd which started from the house of Todaram and which went on swelling till it reached the cremation ground was an unlawful assembly, the common object of which was to prevent the police from interfering with the discharge of their duties in preventing Mt. Sarswati from committing Sati and also to encourage Mt. Sarswati to remain fixed in her resolve and thus instigate her to carry out her intention. The seven accused who have been convicted, namely Tejsingh and others were leading members of the crowd. Their conviction, then fore, is correct As for the five accused who have been acquitted, they were also leading members of this crowd and actually took leading part at the time of the cremation. If these five persons were not bent on aiding and abetting Mt. Saraswati in committing suicide, there was no reason why they should have set fire to the funeral pyre when she was sitting on it. Similarly, if the crowd was not bent on aiding and abetting her in committing Sati, there was no reason why some of them should not have gone forward and stopped Balchand and others from setting fire to the funeral pyre. We are, therefore, of opinion that Balchand, Askaran, Maluram, Daluram and Jeeyaram are also as much guilty, if not more, under Sections 147, 342 and 309 of the Indian Penal

Code as the seven accused convicted by the learned Sessions Judge.

11. Now we come to the question of sentence. The learned Sessions Judge has sentenced the accused to six months" rigorous imprisonment. The reasons he has given for this ridiculously lenient sentence are rather strange in the middle of the 20th century. He is still not sure whether the people are wrong or right in their adoration of Sati, though the law in this country has declared abetment of suicide to be a crime for over a hundred years. He seems to sympathise with the view of the people that it is their religious duty to help a woman who wants to become a Sati. He has also made the observation that the custom of Sati is a well known custom and judicial notice can be taken of it. We are surprised at this. This custom which was prevalent upto 1833 was forbidden more than 100 years ago by law. We are, therefore of opinion that a sentence of six months" rigorous imprisonment for such a barbarous act of abetment of Sati is ludicrous. It is essential that people should respect the law, which in this case is also, in our opinion, right, particularly a law which has been in force for over a hundred years. In such cases of Sati therefore, which off and on take place, we are of opinion that a deterrent sentence is called for. Taking all circumstances into account, we consider that a sentence of five years" rigorous imprisonment is the minimum that we can give to these accused.

12. We, therefore, allow the appeal of the State and convict Balchaud, Askaran, Maluram, Daluram and Jteyaram under Sections 147, 342 and 306 of the Indian Penal Code and sentence them to one year"s rigorous imprisonment u/s 147, one years rigorous imprisonment u/s 342 and five years" rigorous imprisonment u/s 306. The sentences will run concurrently.

13. We dismiss the appeal of Tejsingh, Bhoora- ram, Udaram, Padmararn, Rawatsingh, Gidaram and Bhoorsingh and enhance their sentences to a total rigorous imprisonment of five years, namely one year u/s 147, one year u/s 342 and five years u/s 306 of the Indian Penal Code the sentences to run concurrently. The District Magistrate will take steps to have these people arrested and send them to Jail to serve out the sentences. This disposes of the revision also.