

IN THE HIGH COURT OF LAHORE

Decided On: 17.07.1929

Appellants: **Ilam Din**

Vs.

Respondent: **Emperor**

JUDGMENT

Broadway, J.

1. Ilam Din, son of Talia Mand, a Tarkhan of some 19 or 20 years of age, and a resident of Mohalla Sirianwala, Lahore City, has been-convicted of having caused the death of one Rajpal on 6th April 1929, and, under Section 302, I.P.C., has been sentenced to death. He has appealed, and the case is also before us under Section 374, Criminal P.C.

2. The deceased was a Hindu book-seller having a shop in the Hospital Road. Some little time back he had given grave offence to the Muslim community by the publication of a pamphlet entitled "Rangila Rasul." He had been proceeded against under Section 153-A, I.P.C. in connexion with this publication, and after a protracted trial, had been convicted in January 1927. His conviction was, however, set aside by the High Court in May 1927 Rajpal v. Emperor A.I.R. 1927 Lah. 590. The pamphlet was a scurrilous production and had wounded the susceptibilities of certain members of the Muslim community to such an extent that his acquittal was followed by two abortive attempts to murder the author, with the result that it was found advisable to afford him police protection.

3. It seems that he had recently gone on a visit to Hardwar and, during his absence, the guard was removed. He returned from Hardwar on 4th April and whether the guard had not yet been restored or had temporarily absented himself (the point is immaterial) he was murderously attacked in his shop at about 2 p.m. on 6th April.

4. That his assailant intended to cause death is established by the medical evidence which shows that he received no less than eight wounds, seven being incised and one a punctured one. The nature of these injuries also show that Rajpal endeavoured to defend himself, for four of the incised wounds were on his hands. He received a wound on the top of his head that cracked the right parietal bone, two incised wounds above the spine of the left scapula and a punctured wound in his chest. This last pierced the heart cutting the fourth rib and caused almost instantaneous death.

5. The case for the prosecution is that the appellant purchased a knife from Atma Ram (P.W. 8) on the morning of 6th April, proceeded to the shop of the deceased at about 2 p.m. and attacked him as he was sitting on the gaddi in the outer verandha writing letters. The assault was witnessed by Kidar Natli (P.W. No. 2) and Bhagat Ram (P.W. No. 3) employees of the deceased who were in the shop at the time, the former sitting at work in the inner verandah and the latter standing on a ladder in the outer verandah or room arranging books on the shelves. They raised an alarm, threw books at the appellant who dropped his knife and ran out. He was pursued by Kidar Nath and Bhagat Ram who were joined outside by Nanak Chand (P.W. No. 4) and Parma Nand (P.W. No. 5). The appellant turned into a woodyard belonging to Vidya Rattan, who had seen the pursuit from his office door and who hastened into the woodyard and seized the appellant, being assisted by the pursuers who were on his heels. The appellant is then stated to have repeatedly and loudly proclaimed that he

was neither a thief nor a dacoit but had "taken revenge for the prophet." Ham Din was taken to the deceased's shop, the police were notified and took over the appellant and the investigation.

6. A very brief report was made by Kidar Nath who said nothing of the assertion made by Ham Din when he was captured, and did not mention the name of his fellow servant.

7. On the following day as a result of a statement made by Ilam Din to the Police the shop of Atma Ram was discovered, and on 9th this Atma Ram picked out the appellant at an identification parade held under the supervision of a Magistrate as the man to whom he had sold the knife found in Rajpal's shop.

8. There can be no doubt that Atma Ram could have sold the knife as he had several of identically the same make and pattern, two of which have been produced as exhibits. He stated that he bought these knives at an auction sale of Medical Stores.

9. M. Jinha has attacked the prosecution story on various grounds. He urged that Kidar Nath was not a reliable witness because (1) he was an employee of the deceased and, therefore, "interested;" (2) he had not stated in the First Information Report (a) that Bhagat Ram was with him, and (b) that the appellant had stated that he had avenged the Prophet. As to Bhagat Ram it was contended he, as an employee, was interested, and as to the rest that there were variations in some of the details.

10. Objection was taken to the admissibility of the statements made to the police which led to the discovery of Atma Ram, and Atma Ram's identification of Ham Din and his testimony regarding the sale of the knife to Ham Din were characterised as untrue and improbable. (His Lordship after discussing the evidence held that the guilt had been established and proceeded as follows.) Mr. Jinnah finally contended that the sentence of death was not called for and urged as extenuating circumstances, that the appellant is only 19 or 20 years of age and that his act was prompted by feelings of

veneration for the founder of his religion and anger at one who had scurrilously attacked him.

11. As was pointed out in Amir v. Emperor A.I.R.1928 Lah.531:

the more fact that the murderer is 19 or 20 years of age, * * * * is a wholly insufficient reason for not imposing the appropriate sentence provided by law.

12. The fact that Ilam Din is 19 or 20 years of age is not, therefore, a sufficient reason for not imposing the extreme penalty and I am unable to see that the other reasons advanced by Mr. Jinnah can be regarded as affording any excuse for a deliberate and cold blooded murder of this type.

13. I would, therefore, dismiss the appeal, and confirm the sentence of death

Johnstone, J.

14. I concur.

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