PRIVY COUNCIL.

Before Viscount Haldane, Lord Sumner and Lord Sinha.

1926

Nov. 11.

MUKAND SINGH AND OTHERS (Petitioners),

versus

THE KING-EMPEROR (Respondent).

(**High Court Criminal Appeal No. 411 of 1926**).

Privy Council Practice—Special Leave to Appeal—Criminal Matter—Multiplicity of Charges—Criminal Conspiracy—Indian Penal Code, Act XLV of 1860, section 120-B—Criminal Procedure Code, Act V of 1898, section 234.

Five persons had been tried, together with 22 others, upon eight charges, the first charge being, under section 120-B and section 109 of the Indian Penal Code, of a criminal conspiracy to commit murder and other offences; the other charges alleged various specific offences as committed in pursuance of the criminal conspiracy at various dates; the third charge specifying seven murders committed between March 1923 and April 1924. The five persons were found guilty of one of the murders charged, were convicted under section 302 of the Code read with section 120-B, and were sentenced to death; the convictions and sentences were confirmed by the High Court. They petitioned for special leave to appeal, relying upon section 234 of the Code of Criminal Procedure, by which only three offences of the same kind within a year may be charged together, and upon the decision of the Board in *Subramania Iyer* v. *The King-Emperor* (1). Section 120-B of the Indian Penal Code was added by Act VIII of 1913.

Held, that the petition should be dismissed.

Petition for special leave to appeal from convictions and sentences of death confirmed by the High Court on June 25, 1926 (2).

The five petitioners and 22 others were charged under the following eight charges, stated shortly:—

(1) that between January 22 and September 1924 at certain named places they jointly and severally agreed with one another and with some or all of other persons named

(1) (1901) L. R. 28 I. A. 257: I. L. R. 25 Mad. 61 (P.C.).

(2) See page 233 *infra*.

in a schedule, to do or cause to be done illegal acts, to wit:—(*i*) import and possess arms and ammunition, (*ii*) commit and attempt to commit murder, (*iii*) cause grievous hurt, and (*iv*) commit robbery and dacoity, which are offences punishable under sections 19 and 20 of the Indian Arms Act (XI of 1878), sections 302, 307, 326, 392, 394 to 398 of the Indian Penal Code with death, transportation or rigorous imprisonment for a term of two years or more, and thereby committed an offence punishable under section 120-B and section 109 of the Indian Penal Code.(1).

(2) that they, in conspiracy with persons named, in pursuance of the afore-mentioned conspiracy did (*i*) go about armed without a licence contrary to section 13 of the Act, (*ii*) have in their possession or control fire-arms and ammunition, and thereby committed offences punishable under sections 19 and 20 of the Indian Arms Act (XI of 1878) read with sections 120-B, 109, 114 to 116 of the Indian Penal Code.

(3) that they, in conspiracy with persons named, in pursuance of the aforesaid criminal conspiracy, committed murders, and among others caused the death of seven specified persons at dates between March 1923 and April 1924, and thereby committed offences punishable under sections 302 read with sections 120-B, 109, 114 to 116 of the Indian Penal Code.

(1) Section 129-B was inserted in the Code by Act VIII of 1913 and provides for a criminal conspiracy to commit an offence; section 109 provides for the abetment of offences.

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Charges 4 to 8 charged that they, in conspiracy with the persons named, in pursuance of the conspiracy previously charged committed specified robberies, caused grievous hurt to specified persons, committed eight acts of dacoity on named dates between February 1923 and February 1924, and committed three specified acts of dacoity between March 1923 and April 1924 in which murders were committed.

The petitioners who were tried together with the other 22 persons on all the above charges by the Additional Sessions Judge at Lahore were found guilty under charge (3) of three murders therein specified committed on or about the night of April 10, 1924: they were sentenced to death under section 302 read with sections 120-B, 109, 114 to 116 of the Indian Penal Code.

The High Court at Lahore, on June 25, 1926, confirmed the convictions and sentences (1). The learned Judges (Broadway and Zafar Ali JJ.) held, on the question of the joinder of charges, that charges 2 to 8 merely recited the various incidents or offences committed in pursuance of the conspiracy first charged, and that there was no illegality in the joint trial.

The five petitioners now prayed for special leave to appeal to His Majesty in Council.

1926. Nov. 14. *DeGruyther K. C.* (*Wallach* with him) for the petitioners.

The joint trial of the petitioners on eight different charges, which among others included seven charges of murder, two of attempted murder, four of robbery, two of grievous hurt, and eleven of dacoity, was contrary to the provisions of the Code of Criminal Procedure, sections 233, 234, 235. In effect the petitioners were tried for more than three murders, apart

(1) See page 233 *infra*.

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from other offences committed within one year. Having regard to the decision of the Board in *Subrahmania Iyer* v. *King-Emperor* (1), the trial was illegal and the petitioners should be granted special leave to appeal.

Dunne K. C. That decision is distinguishable since section 120-B of the Penal Code making criminal conspiracy an offence was added only in 1913.

DeGruyther K. C. In principle the decision applies; had the petitioners been charged only with a criminal conspiracy and convicted merely on that charge, the matter would be different.

Dunne K. C. (*Kenworthy Brown* with him) for the Crown were not further called on.

The judgment of their Lordships was delivered by :—

VISCOUNT HALDANE, who said merely that the petition must be dismissed.

A. M. T.

Petition dismissed.

Solicitor for the Petitioners : *T. L. Wilson & Co.*

Solicitor for the Respondent : *Solicitor, India Office.*

The judgment of Broadway and Zafar Ali JJ. dated 25th June 1926, under appeal to the Privy Council :—

This and the connected appeals Nos. 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 459, 474, 475, 476, 497, 556, 581, 582 and 598 of 1926 have arisen out of what is known as the Supplementary *Babbar Akali* trial, in which 28 persons were tried together, charged with being members of a criminal conspiracy which started in January 1922 and was

(1) (1901) L. R. 28 I. A. 257 ; I. L. R. 25 Mad. 61 (P.C.).

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in existence up to September 1924. The object of the conspiracy was alleged to have been the importing and possession of arms and ammunition; the commission and attempt to commit murder; causing grievous hurt; and the commission of robbery and dacoity which are offences punishable under sections 19 and 20 of the Indian Arms Act and sections 302, 307, 326, 392, 394, 395, 396, 397 and 398 of the Indian Penal Code with death, transportation or rigorous imprisonment for a term of two years or more, and the persons concerned in the conspiracy were, therefore, punishable under sections 120-B and 302/109 of the Indian Penal Code.

Of these 28 persons, one Dhanna Singh (No. 12) died during the trial, two have been acquitted and of the remainder, seven have been sentenced to death and the other eighteen to transportation for life. All these sentences have been passed under sections 120-B and 302 of the Indian Penal Code and in the majority of cases the learned Additional Sessions Judge has also convicted, under sections 120-B and 395 of the Indian Penal Code, and awarded separate sentences of seven years' rigorous imprisonment each: the sentences to run concurrently with those passed under sections 120-B and 302 of the Indian Penal Code. All the 25 persons convicted have preferred appeals, three through the jail in which they are confined and the remainder through counsel. On behalf of Ishar Singh (No. 19), appellant, we have heard Mr. Bishen Narain. Mr. Bhagat Ram Puri has addressed us on behalf of Sundar Singh (No. 22), Mukand Singh (No. 20), Gujjar Singh (No. 24), Nikka Singh (No. 23) and Banta Singh (No. 21); *Diwan* Chaman Lal has appeared on behalf of Nikka Singh (No. 26), Teja Singh (No. 11), Gian Singh (No. 5), Gurdit Singh (No. 17) and Banta Singh (No. 6), while Mr. Raghunath Sahai has argued

the appeals of Sadhoo Singh (No. 25), Bhola Singh (No. 15), Kishen Singh (No. 16), Pheru (No. 3), Udham Singh (No. 4), Surain Singh (No. 8), Labh Singh (No. 1), Bhan Singh (No. 2), Hazara Singh (No. 18), Bhola Singh (No. 10) and Harbakhsh Singh (No. 28).

Before dealing with the various appeals, it will be as well to dispose of certain points raised by the various counsel which are common to all the appellants. Firstly, objection was taken to the trial, it being urged that the trial was bad owing to the fact that there had been a misjoinder of charges. After giving due weight to the arguments advanced at the Bar we are satisfied that there is no force in this contention. It is perfectly clear that the charge, as framed, recited correctly the fact that the various accused were alleged to have joined a criminal conspiracy, having as its objects—

(1) the import and possession of arms and ammunition and going about armed;
(2) the commission of and the attempt to commit murders;
(3) the causing of grievous hurt; and
(4) the commission of robbery and dacoity.

The remaining heads of the charge from secondly to eighthly (both inclusive) merely recited the various incidents or offences committed from time to time by various members of the conspiracy in pursuance of the objects of that conspiracy. That is perfectly apparent from the phraseology of the various heads which makes it clear that the various acts or offences set out under each head were done or committed in pursuance of the aforesaid conspiracy, the " aforesaid conspiracy " being clearly the one recited in " firstly " of the charge.

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Nor do we think there is any force in a contention raised by Mr. Raghunath Sahai to the effect that the charge related to two separate conspiracies, namely, one conspiracy to commit murders and another to commit dacoities. It is true that the learned Additional Sessions Judge has convicted many of the appellants of being members of (*a*) a conspiracy to commit murder, and (*b*) a conspiracy to commit dacoity and has sentenced them separately for each offence. The charge, however, is perfectly clear and there was nothing illegal in the learned Additional Sessions Judge coming to separate findings as against individual appellants of having committed particular acts. The fact that he made the sentences to run concurrently indicates that he realised that the main and proper charge was the one recited in firstly.

The next point taken was that the learned Additional Sessions Judge was wrong in not giving a separate and definite finding as to the existence of the conspiracy referred to in firstly of the charge. At page 4 of the printed judgment appears the following :—

> " The Main Babbar Akali Conspiracy Case and the First Supplementary Case were tried and decided by Mr. Tapp, Additional Sessions Judge for all the Sessions Divisions in the Punjab and the appeal to the High Court has also been decided. So the fact that there was a Babbar Akali Conspiracy and its aims and objects are a decided fact, which I can take as decided and need not go over that ground again. The evidence on those points has been produced in my Court over again, but I need not discuss it. The defence counsel agreed

> with me that I can take it as already decided and all that I have to determine is whether all or any of the accused now under trial joined the said conspiracy and whether the various offences, which are referred to in this case, were committed in pursuance of the said Babbar Akali Conspiracy ".

It will be seen that the learned Additional Sessions Judge points out that there was evidence on this point which he did not consider it necessary to discuss, as the counsel then appearing for the present appellants agreed that he could take it as already decided that such a conspiracy existed. While Mr. Bishen Narain, Mr. Bhagat Ram Puri and Diwan Chaman Lal have raised this point they have not attempted to show that the evidence, which undoubtedly exists on the record and which we have perused, did not warrant the conclusion arrived at. In our judgment there is ample material on the record to show that there was in existence a conspiracy from January 1922 to September 1924, the members of which terrorised the whole countryside, committed murders and dacoities, threatened the well-wishers of the Government, whom they described as "Jholichuks" and "reformed" the same by murdering them. Mr. Raghunath Sahai frankly admitted that such a conspiracy existed, but he joined his learned colleagues in urging that the dacoities and murders set out in the indictment had not been shown to have been committed in pursuance of the said conspiracy and further that the evidence on the record did not warrant the conclusion that the present appellants took part in any of the alleged murders or dacoities.

Another point raised by Messrs. Puri, Chaman Lal and Raghunath Sahai related to the admissibility

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of the confessions made by eighteen of the appellants. It was urged that all these confessions were inadmissible for the reason that the provisions of section 164 of the Criminal Procedure Code, as recently amended, had not been complied with. By sub-clause (3) of section 164 of the Criminal Procedure Code a Magistrate is required, before any confession, to explain to the person making it that he is not bound to make a confession and that if he does so it may be used as evidence against him, and " no Magistrate shall record any such confession unless, upon questioning the person making it, he has reason to believe " that it was made voluntarily. Now, in the case of the majority of these confessions the warning referred to was not entered in the certificate as having been given, with the result that it became necessary for the prosecution to call the Magistrates who recorded these confessions for the purposes of section 533 of the Criminal Procedure Code. It was urged that the fact that the said warning did not appear on the record of the confession was a defect that could not be cured by section 533 of the Criminal Procedure Code and reference was made to *Partap Singh* v. *The Crown* (1). That was a case decided by a Division Bench of this Court consisting of a member of this Bench and Addison J. In that case it was clearly held that if, *as a matter of fact*, a warning had been given, the defect in the record was curable under section 533. We do not think it necessary to discuss this point in detail as we consider that *Partap Singh* v. *The Crown* (1), lays down the law with sufficient clarity. The Magistrates, who recorded the confessions in this case, have been produced and have solemnly sworn that before recording the confessions of the persons making

(1) (1925) I. L. R. 6 Lah. 415.

them each such person was warned and told that he was not bound to make any statement at all. It has been urged that the testimony of these Magistrates should not be accepted; but no adequate reason has been shown for such a proposition. We see no reason to doubt that these Magistrates are speaking the truth when they say that they did comply with the law in this particular and we must, therefore, hold that these confessions are admissible.

It was next contended that these confessions having been retracted no weight could attach to them. So far as the confession of one appellant can be used as against another appellant we think that little or no weight should attach to these confessions, but as against the person making the confession we are unable to see any reason for holding that the mere fact that the confession has been retracted renders it necessary to rule it out of consideration as against deponent. The weight to be given to each confession will be considered when dealing with the individual case of the person making it.

A further point raised by Mr. Raghunath Sahai in this connection needs reference. He urged that it was incumbent on a Magistrate before recording a confession to satisfy himself by questioning the person about to make such confession that he was making it voluntarily. He urged that, inasmuch as the record of the confessions did not show what questions were put to the various individuals who made them, all the confessions were inadmissible. He based his argument on *Farid* v. *The Crown* (1), which no doubt to some extent bears out his contention. That case was decided in 1921 before section 164 was amended as it

(1) (1921) I. L. R. 2 Lah. 325.

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at present stands. We do not think it necessary, therefore, to discuss this question further and must hold that there is no force in this contention.

It was also urged that these confessions should be held to have been improperly induced by the fact that the various persons who made them hoped to be made approvers. It is true that in the former trial in which 91 persons were concerned there were 22 approvers. In the present case, however, there are only two approvers and even if any of the appellants was led to make his confession by a hope that he would be given a pardon and made a witness in the case there is not a tittle of evidence on the record to suggest that any police officer or other person in authority did or said anything to any of the appellants which could possibly be construed into holding out to such person a hope of pardon. The mere fact that a confession has been retracted raises no presumption that it had been made under any inducement and in the present case reference to the statements made by the various appellants shows that none of them alleged that any inducement was held out to them. Indeed in the majority of cases the appellants stated that they never made any confession at all.

[*The remainder of the judgment is not required for the purpose of this report—Ed.*]