

Akeila Sheikh and anr. Vs. the State

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Court : Guwahati

Decided On : Aug-01-1952

Judge : Ram Labhaya and Deka, JJ.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 297; [Indian Penal Code \(IPC\), 1860](#) - Sections 396

Appeal No. : Criminal Appeal No. 77(j) of 1951

Appellant : Akeila Sheikh and anr.

Respondent : The State

Advocate for Def. : D.N. Medhi, Sr. Govt. Adv.

Advocate for Pet/Ap. : S.K. Ghose, Adv. for No. 1

Disposition : Appeal dismissed

Prior history : Deka, J. 1. This is an appeal from jail filed on behalf of two persons, Akeila Sheikh and Moslem Sheikh both of whom were convicted under Section 396, Penal Code, and sentenced to transportation for life and rigorous imprisonment for ten years respectively. The enhanced sentence was passed against Akeila Sheikh due to his having previous conviction under Section 395, Penal Code. 2. The prosecution case is that there was a dacoity in the house of one Sikandar Sheikh of village Chuapata on

Judgement :

Deka, J.

1. This is an appeal from jail filed on behalf of two persons, Akeila Sheikh and Moslem Sheikh both of whom were convicted under Section 396, Penal Code, and sentenced to transportation for life and rigorous imprisonment for ten years respectively. The enhanced sentence was passed against Akeila Sheikh due to his having previous conviction under Section 395, Penal Code.

2. The prosecution case is that there was a dacoity in the house of one Sikandar Sheikh of village Chuapata on the night of 24-5-1950 or strictly speaking at about 1 a.m. on 25-5-1950 in the course of which persons numbering about twelve to twenty-five surrounded the house of Sikandar who was one of the well-to-do villagers. Four persons made an entry into the house by forcing open the door and attacked Sikandar who freed himself from their clutches and took a spear to avenge the intruders. The dacoits immediately came out and some one from amongst the dacoits fired a gun at Sikandar injuring him on his left thigh when he fell to the ground profusely bleeding. The dacoits entered the house again and prevailed upon the injured man to point out where his money was whereupon Sikandar pointed to a box on the ceiling of the house which the dacoits brought down and broke open. The contents of the box were ransacked including Rs. 1,200/- in cash and some ornaments. The dacoits then left the house of Sikandar and some of them entered the house of Sobhan, son of Sikandar living in a separate house. Only an umbrella and a wrapper were removed from that house and the dacoits attempted to remove the gold-nose-ring from the person of Sobhan's wife which failed. Sobhan and some of their neighbours approached Sikandar Sheikh soon after the dacoits left and he told his son and the persons who assembled by his side that he was able to recognise four persons amongst the dacoits and they were Moslem Sheikh, Akeila Sheikh, Bisa Sheikh and Rustom Ali. The same story was repeated when Sikandar's brother Mohammad Ali Munshi came to him after the occurrence.

Sobhan lodged an ejahar on 25-5-1950 at Bilasipara Police Station at about 5 P.M. when he took the injured person as well to the Thana. The injured was admitted in the Bilasipara Dispensary but his condition proving serious, he was sent to the Dhubri hospital next day, that is on 26-5-1950 and the man died on the morning of 27-5-1950 at about 3 A. M. A declaration purported to be a dying declaration was taken down in English by the doctor in charge of the Bilasipara Dispensary before Sikandar was despatched to Dhubri. The names of all the four persons whom Sikaudar had named as the deceits whom he recognised in the course of the dacoity were given in the Ejahar (F. I. R.) and Sobhan, further stated therein that Moslem was recognised by himself and his wife while some of the dacoits entered his house. These four persons were tried by the Court of Sessions with the help of a jury who unanimously returned a verdict of guilty against Akeila Sheikh and Moslem Sheikh under Section 396, Penal Code, and a verdict of not guilty against other accused, Bisa and Rostum.

3. This appeal was filed from jail but in consideration of the fact that one of the accused was sentenced to transportation for life, the Court directed Mr. Ghose to appear on behalf of Akeila Sheikh. It was urged on behalf of this accused that it ought to have been placed before the jury that the evidence was very inadequate for the purpose of conviction of the accused under Section 396, Penal Code, and that it ought to have been pointed out to the jury that there was actually no murder though Sikandar might have been injured with a gun and at least there was nothing to show that Akeila had anything to do with the shooting.

4. With regard to the first point raised by Mr. Ghose, it has been clearly placed before the jury by the learned Additional Sessions Judge that as a matter of fact, the only evidence against this accused Akeila was the statement of recognition made by Sikandar Sheikh. That Sikandar made a statement to that effect is corroborated by several persons including his son Sobhan and Sikandar's two wives, Amiron Bibi and Faiziri Bibi, who were actually present inside the house at the time of the commission of the dacoity. Some of the neighbours of Sikandar also support the story. The statement that was made before the doctor in charge of the Bilasipara Dispensary has also been proved as a dying declaration alleged to be made by Sikandar. The doctor himself has been examined by prosecution to

prove the statement and nothing has been suggested against him as to why he should have made a false document implicating these or any of the accused persona. It is admitted that accused Akeila lived in the village of Nayeralga and that was the village recorded against the name of Akeila, the person who was implicated by Sikandar before the doctor. In case of two of the accused persons, Bisa and Rostum, there were some other persons bearing the same name in their village, but in case of Akeila no such suggestion was made. The learned Additional Sessions Judge summarised his observation to the jury about this accused by saying :

'To be short, if you are prepared to accept the testimony of the neighbours who came concerning the identity of this man and also if you are prepared to accept the dying declaration, then you may think that this Akeila was one of the assailants and dacoits. If, however, there is any scope for any reasonable doubt in your mind about the complicity of this man, then he is entitled to the benefit of doubt.'

In my opinion, the summing up was quite fair with regard to this accused and as a matter of fact, nothing important has been left out that might have been said in favour of the accused.

In the memorandum of appeal presented from jail, there is a ground to the effect that the Judge ought to have pointed out to the jury that nothing incriminating was found inside the house of the accused and that should have gone to the jury. The Judge has distinctly said that only the piece of evidence against the accused is the statement of Sikandar Sheikh that has been brought to the record by the depositions of the persons who heard him so saying immediately after he was injured and his statement recorded two days after the incident by the doctor. It was contended by Mr. Ghose that in the F. I. R. the name of Akeila's village was not given and that matter was not placed before the jury. It cannot be said to be exactly a contradiction of what is given out later in the course of the evidence but it is an omission that might have favoured the accused. But the F. I. R. having been placed before the jury, we do not consider this omission to be of any material importance and the charge vitiated thereby. The jury having accepted the evidence, howsoever small it may be against the accused and there being no mis-

direction or non-direction of any material importance, we consider the charge to be fair and the convictions, justified.

5. With regard to the second contention raised by Mr. Ghose that actually no murder was committed by the accused, we are not in a position to accept this contention. It may not be usual to meet with death in every case of shooting with a gun but we cannot at the same time say that the injury so caused is not such that is not likely to cause death or sufficient in the ordinary course of nature to cause death. It might have been possible to avert death by skilful medical treatment but we cannot use that as a condition which is likely to affect the nature of the injury which is otherwise fatal or sufficient in the ordinary course of nature to cause death. In that view, we consider the objection to be untenable.

6. Under Section 396, Penal Code, it is not required that the murder should be committed by a certain individual or by one amongst the dacoits to the knowledge of the rest of persons involved in the dacoity,--mere commission of murder in the course of dacoity is enough to invoke the provisions of Section 396, Penal Code, against all the persons who were conjointly committing the dacoity. It is not suggested by the prosecution that Akeila handled the gun or that he was the man who actually shot at Sikandar but that he was one amongst the assailants. Mr. Ghose suggested that since Sikandar had a gun it may be that the gun went off when he was trying to drive away the dacoits with it but that was not the suggestion at any of the earlier stages and we cannot at this stage entertain that plea as a plea of accident or as a plea of self-defence.

7. Mr. Ghose has not been able to place anything before us favouring the case of Moslem Sheikh who was not only named by Sikandar after the incident but was also recognised by his son Sobhan and other inmates of Sikandar's family. It was further admitted that he was known to the members of Sikandar's family to whom he was distantly related, but it was suggested that they had some grudge due to land dispute. Everything was clearly placed before the jury including the strained feeling and the jury having accepted the evidence against Moslem Sheikh, we cannot say that the conviction was not fair in view of the fact that there was no mis-direction which might have gone to prejudice the case of the accused.

8. The result is that the convictions of both the accused persons are upheld but in view of the surrounding circumstances and in view of the paucity of evidence as to whether these two persons had any collaboration or knowledge of the gun being used against Sikandar Sheikh, we reduce the sentence on Akeila Sheikh to a period of rigorous imprisonment for ten years and in case of Moslem Sheikh to a period of seven years' rigorous imprisonment. We accordingly dismiss the appeal but modify the sentences to the extent indicated above.

Ram Labhaya J.

9. I agree.

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