SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

SerajuddIn Ahmed and ors. Vs. State

SerajuddIn Ahmed and ors. Vs. State

SooperKanoon Citation : sooperkanoon.com/119840

Court : Guwahati

Decided On : Apr-29-1952

Judge : Thadani, C.J. and Ram Labhaya, J.

Acts : Evidence Act, 1872 - Sections 24

Appeal No. : Criminal Revn Nos. 100 and 101 of 1951

Appellant : SerajuddIn Ahmed and ors.

Respondent : State

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

Advocate for Pet/Ap. : S.C. Barua, Adv.

Disposition : Application allowed

Prior history : Thadani, C.J. 1. These are two applications for revision by 3 convicted persons, namely, (1) Serajuddin Ahmed, (in Cr. Revn. No. 100/51), & (2) Niron Dutta and (3) Sarubapu Lilaram (in Cr. Revn. No. 101/51), who were convicted by the learned Assistant Sessions Judge, U. A. D., under Section 395, I. P. C. at a trial held with the aid of a Jury, and sentenced to 4 years rigorous imprisonment each. On appeal, the learned Sessions Judge, U. A. D., confirmed their convictions and sentences. They h

Judgement :

Thadani, C.J.

1. These are two applications for revision by 3 convicted persons, namely, (1) Serajuddin Ahmed, (in Cr. Revn. No. 100/51), & (2) Niron Dutta and (3) Sarubapu Lilaram (in Cr. Revn. No. 101/51), who were convicted by the learned Assistant Sessions Judge, U. A. D., under Section 395, I. P. C. at a trial held with the aid of a Jury, and sentenced to 4 years rigorous imprisonment each. On appeal, the learned Sessions Judge, U. A. D., confirmed their convictions and sentences. They have now come before us in revision.

2. The case for the prosecution was that on the night of 17/6/1949, a dacoity took place in a house belonging to 3 brothers, viz., (1) Kanakeswar, (2) Chitra, and (3) Jurai, in the Thengal Mouza of Jorhat Subdivision, and cash, ornaments and other valuable articles of the value of nearly Rs. 20,000/- were stolen. On the night in question, the only inmates present in the house were Jurai, his nephew Sohindra, and their ploughman Bhobela. Jurai was awakened by the barking of dogs; he aroused Sohindra and Bhebela. Jurai flashed a torchlight, but discovered nothing; Jurai and the 2 inmates then opened the door of the main house and as soon as Jurai flashed a torch, he saw a crowd of some 20 armed men inside the house. The intruders attacked Jurai and the 2 inmates. Jurai received injuries. The intruders obtained the keys from Jurai, opened the safe and boxes and removed cash and ornaments worth some Rs. 20000/-, and then disappeared. None of the intruders were identified as their faces were muffled. In due course, a First Information Report was lodged at the Police Station and, on completion of the investigation, the Police sent up these 3 persons along with 2 others for trial; the latter two were acquitted by the learned Assistant Sessions Judge.

3. The only evidence upon which the prosecution relied for the purpose of a conviction was the retracted confessions of the accused Serajuddin and Sarubapu Lilaram. The learned Sessions Judge, while dealing with the appeal before him, expressed the opinion that had it not been for the absence of misdirection in the summing up of the learned Assistant Sessions Judge, he would have acquitted the appellants.

4. We think that there is a clear misdirection on one of the aspects of a retracted confession in the learned trial Judge's summing up. The learned Assistant Sessions Judge, while dealing with the retracted confessions, lost sight of the fact that a retracted confession requires to be corroborated by independent evidence on material particulars,--the material particulars being the factum of the crime and the identity of the participants in the crime. While the learned Assistant Sessions Judge rightly directed the Jury on the question of the factum of the dacoity, he has said nothing about the required corroboration as to the identity of the persons accused of the offence. This, in our opinion, was clear misdirection. We wish to point out that in every case where there is a retracted confession, the corroboration required is on two points: (1) as to the factum of the crime, and (2) as to the identity of the persons accused of the crime.

5. In this case, the learned Assistant Sessions Judge failed to direct the Jury on the second point, namely, as to the presence or

absence of corroboration as to the identity of the accused persons. This has resulted in an erroneous verdict of the Jury.

6. We are satisfied--as the learned Sessions Judge was satisfied--that there is no evidence on which a conviction can be properly sustained against any of the persons convicted by the learned Assistant Sessions Judge. We accordingly set aside the convictions and sentences passed on the accused petitioners.

7. The result is that the applications are allowed, and the Rules are made absolute. The three petitioners will be set at liberty. Both the revision applications are disposed of by this order.

Ram Labhaya, J.

8. I agree.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com