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Court : Guwahati

Decided On : Mar-04-1968

Judge : C. Jagannadhacharyulu, J.

Appellant : Pramode Chandra and ors.

Respondent : State

Judgement :

C. Jagannadhacharyulu, J.

1. This is a petition filed under Section 498 Cr. P.C. against the order of the Sessions Judge of Tripura in Criminal Motion No. 37 of 1968, dated 21-2-1968, refusing to grant bail to the three petitioners concerned under Sections 395 and 397 I.P.C. in G. R. Case No. 100 of 1967, Kamalpur, Police Station Case No. 1 (12) 67.

2. The case of the prosecution is that at about 2 or 3 A. M. on 2-12-1967 one Kamar Uddin of Methirma village came outside his hut to answer call of nature, that after going back into his hut, he warmed himself by kindling the fire, that after a while he went to bed keeping the fire kindling and the door unbolted, that then about 10 persons including the petitioners entered into the hut and committed dacoity by stealing Rs. 1750/- in cash and other articles and after causing severe injuries to Kamar Uddin, that Kamar Uddin, his wife and his niece recognized the petitioners and that at about 8 A. M. the F.I.R. was lodged with the Police Station.

It is the further case of the prosecution that the three petitioners were arrested on 3-12-1967 when they were hiding inside a bamboo basket for storing paddy in a different village altogether and that they are liable to be punished under Sections 395 and 397 I.P.C.

3. It appears that the lower Courts released two accused on bail; but both the S. D. M. and the Sessions Judge refused to enlarge the petitioners on bail on the ground that they are likely to abscond, if released. Hence the present petition.

4. The point for determination is whether the petitioners are entitled to be released on bail.

5. Certified copy of the order-sheet of the learned S. D. M. shows that he received the F.I.R. in his Court on 2-12-1967 and that 5 accused including the 3 petitioners were produced before him on 3-12-67. The names of the three petitioners herein were mentioned in the F.I.R. which was lodged within a few hours after the occurrence took place. It appears that Kamar Uddin, his wife and his niece recognized the petitioners in the light inside as some of the culprits who committed the dacoity. It also appears that Kamar Uddin was so very severely assaulted that his dying declaration was also recorded. There could not be difficulty (according to the prosecution) for Kamar Uddin, his wife and his niece to recognize the petitioners in the light of the burning lamp and also in the light emitted by the kindled fire. So, there is prima-facie evidence against the petitioners. But, the contention of the learned Counsel for the petitioners is that the petitioners are the neighbours of Kamar Uddin and that it is highly improbable that known persons would have committed dacoity without taking precautions to conceal their identity and in support of this proposition he relied on Ram Shankar Singh v. State of Uttar Pradesh AIR 1956 SC 441.

The Supreme Court did not lay down as a general principle that known persons would not commit any dacoity without taking precautions to conceal their identity. If the contention of the learned Counsel for the petitioners is upheld, then any neighbour can easily commit a dacoity and escape on the ground that he did not conceal his identity before committing the dacoity. Every case depends upon its own facts and circumstances. The petitioners are said to be teen-agers. Finding

that the door of the hut was opened, the petitioners and others might have entered into the hut and committed the dacoity, if the case of the prosecution is true. On the ground that the petitioners did not take the trouble of masking themselves before committing the offence, it cannot be stated that the prima facie evidence against them is unbelievable.

6. It has to be borne in mind that the petitioners were arrested on 3-12-1967 when they were hiding in a big bamboo basket used for storing paddy in an altogether different village. The learned Sessions Judge held that, on account of this conduct of the petitioners, it would not be proper to release them on bail as they would be given an opportunity to abscond, if they are released on bail. The learned Counsel for the petitioners stated that even if the petitioners really hid themselves in a basket in another village, this would not by itself show that they absconded. He relied on Sunil Kumar Saha v. State AIR 1953 Cal 191: 1958 Cri LJ 500.

In that case the only thing that was proved against a person under Section 109(a) Cr. P.C. was that on a particular evening of a winter season he was found on the Railway platform moving from place to place without a ticket with a piece of chaddar muffling up his head. It was held that such an isolated act could not| form the foundation of an Order under Section 109(a) Cr. P.C. But, there is prima facie evidence against the petitioners in the present case under Sections 395 and 397 I.P.C. The fact that the petitioners absconded and hid themselves in a big basket in a different village, if true, probabilises the case of the prosecution. It is not an isolated act,' as in the above decision which by itself might not be of much importance. The above decision, therefore, has no application to the facts of the present case.

The learned Counsel for the petitioners further argued that the word 'abscond' has not been defined anywhere, that a mere abscondence before the issue of a process is not at all abscondence. He relied on In re, Nomula Laxminarayana 1963 (1) Cri LJ 517 (AP). In that case the relevant portion of the judgment of the Madras High Court in Srinivasa Ayyangar v. Queen (1882) ILR 4 Mad 393 was extracted. It was held in the latter case that the term 'abscond' is not to be understood as implying necessarily that a person leaves the place in which he is

living, that its etymological and its ordinary sense are to hide oneself. But it was further held that, if a person, having concealed himself before process issues, continues to do so after it has issued, he absconds. The petitioners absconded after the occurrence took place. Later on, the F.I.R. was filed. Their abscondence in view of the present facts of the case shows that the petitioners are likely to go underground or leave the place, if they are released on bail.

7. The next contention of the learned Counsel for the petitioners is that the petitioners' parents were available and could have tampered with the witnesses if they so desired and that, therefore, even if the petitioners are released on bail, the prosecution witnesses would not be tampered with. It might be that the parents of the petitioners might or might not have tampered with the P. Ws. Tampering of P. Ws. is not the only question which has to be considered. The main question is whether the petitioners are likely to abscond or whether they are likely to stand their trial without absconding. In view of their past conduct, I agree with both the lower Courts and find that the petitioners are not entitled to be released on bail.

8. The last contention of the learned Counsel for the petitioners is that as two accused were already released on bail, there is no reason why discrimination should have been made regarding the three accused petitioners. The case against the petitioners is prima facie stronger than the case against the other accused who were released on bail, inasmuch as, firstly, the F.I.R. was lodged within a few hours after the occurrence took place, secondly, the names of all the three petitioners were mentioned in the F.I.R. thirdly, the names of the petitioners were mentioned in the dying declaration of the injured and fourthly, the petitioners absconded. So, their case is different from the case of the other accused persons.

9. In the result, the petition fails and is accordingly dismissed.