

State Vs. Dalma Marak and ors.

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Court : Guwahati

Decided On : Feb-20-1952

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

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 32

Appeal No. : Criminal Appeal No. 48 (j) of 1951

Appellant : State

Respondent : Dalma Marak and ors.

Advocate for Def. : P.K. Lahiri, Adv.

Advocate for Pet/Ap. : D.N. Medhi, G.A. (Sr.)

Disposition : Appeal partly allowed

Judgement :

Thadani, C.J.

1. This is an appeal from Garo Hills by 3 persons who have been convicted by the learned Deputy Commissioner, Garo Hills, under Section 395, I.P.C., and each sentenced to undergo R. I. for 10 years and to pay a fine of Rs.100 or, in default, to undergo further R.I. for six months. The learned Deputy Commissioner has also sent up the case of the appellants under RULE 16 of the Rules framed for the administration of justice in the Garo Hills District, for confirmation of their

convictions and sentences.

2. The case for the prosecution was that on 2-11-1950, towards midnight, when one Subal Marak and members of his family were asleep in their house, 5 persons broke into the middle room of the house armed with lathis, spears, daos and pointed bamboos. On entering the room, they flashed torch lights upon the inmates of the house; some of them seized Subal Marak and severely assaulted him with a lathi, his wife, Matri Mechik, and her son, Gamansing Sangma, were also beaten: Gamansing managed to escape; the daughter of Subal Marak escaped unhurt; one Ruman Sangma was also attacked and injured by some of the intruders. After causing injuries to the inmates of the house of Subal Marak, the intruders disappeared, taking with them a small suitcase containing cash, some clothes, a fountain pen, and & torch light, together valued at Rs. 68-12-0.

3. Shortly after the dacoity, one Ransing Marak, Sardar of the Lasker, and other villagers of Subal Marak, went to his house where Subal Marak and the inmates of his house narrated the occurrence to the Sardar. The Sardar then went to Dalu Police Station and lodged a First Information Report. On completion of the investigation, the three appellants were sent up for trial. Two others are absconding.

4. Mr. Lahiri who appears for the appellants, has frankly stated that he has not very much to say in favour of the appellants on the merits of their convictions. Indeed the evidence appears to be overwhelming. A large number of persons who were injured have implicated the 3 appellants. The First Information Report containable nmes of the appellants as the offenders. The injured persons are P.Ws. 2, 5 and 7. P.W. 6, Matri Mechik, wife of Subal Marak, is blind. P.Ws. 2, 5 and 7 have clearly stated that they recognised the three appellants that night. They knew them previously. The story of dacoity, as given by the prosecution witnesses, is corroborated; by the fact that the witnesses themselves received injuries. There is no justification for rejecting their testimony.

5. We are satisfied that the number of persons who entered the house of Subal Marak and stole property from his house was 5, among whom were the 3 appellants. An offence, therefore, under Section 395, I.P.C., against the 3

appellants has been clearly established.

6. The only question for Our consideration is the question of sentence. The maximum sentence provided by Section 385, I. P. C., is 10 years' R. I. and the learned D. G. has thought fit to pass the maximum sentence upon the appellants. While we agree that this is a serious case of dacoity in which 4 persons were injured, we do not think that this is a case in which the accused persons merited the maximum penalty prescribed by Section 395, I. P. C. We think the ends of justice will be served if we reduce the sentence of 10 years' R.I. passed by the learned D.C., to one of 5 years' R. I. We accordingly reduce the sentence passed on the appellants to 6 years' R. I.

7. We observe that the learned D. C., in addition to passing a sentence of imprisonment for 10 years, has ordered a fine of ES. 100 to be paid by each of the appellants, and ordered them to undergo further R. I. for six months in default of payment of fine. We think that where a substantial sentence of imprisonment has been passed upon a convicted person, as in this case, it is not proper that in addition to a long term of imprisonment, a sentence of fine should be passed. The Supreme Court of India has not approved of this practice in a recent decision. We accordingly set aside the sentence of fine passed upon the appellants and order that the fine, if paid, be refunded to them. It follows that the sentence of R. I. for six months, in default of payment of fine, is set aside.

8. The appeal and the reference are disposed of accordingly.

Ram Labhaya, J.

9. I agree.

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