

Venkatesh @ Seena Vs. State

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Court : Karnataka

Decided On : Feb-24-1993

Reported in : ILR1993KAR1218; 1992(2)KarLJ16

Judge : R. Ramakrishna, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 395

Appeal No. : Crl. Appl. No. 137 of 1989

Appellant : Venkatesh @ Seena

Respondent : State

Advocate for Def. : Y.R. Jagadeesh, HCGP

Advocate for Pet/Ap. : N. Sampath Kumar, Adv.

Disposition : Appeal allowed

Judgement :

R. Ramakrishna, J.

1. The appellant is the first accused in S.C.No. 17 of 1988 on the file of the learned District and Sessions Judge, Tumkur. Four other persons were arraigned as Accused Nos.2 to 5. The charge was one under Section 395 of the Indian Penal Code. During the course of the trial, Accused No. 3 Narayanappa was absconding.

Therefore, the trial proceeded against the appellant and three other accused.

2. The trial Court has convicted the appellant only on the basis of the alleged recovery made on his voluntary statement Ex.P.13. The article recovered was, a gold ingot from P.W.2 Vishwanath, as according to the prosecution, the Gold chain which was sold to P.W.2 was melted and converted into ingot. The other three accused were acquitted as the prosecution has not proved their involvement in this offence.

3. Admittedly, the alleged dacoits were not identified by P.W.3 -Girijamma and P.W.5 - Ramakrishnaiah the wife and husband respectively. It is alleged when they were proceeding to a village called Raghuvanahalli at about 8.45 on 1.10.1987, the appellant and 4 others have waylaid and stolen the golden chain which was worn by P.W.3. After this alleged robbery, P.W.3 and P.W.5 said to have visited the sister of P.W.5 and stayed there upto 3.10.1987. There is no evidence on record whether this fact of robbery was informed to the relative of P.W.5. On 3.10.1987, P.W.3 and P.W.5 visited the Government Hospital at Tumkur for the alleged injuries sustained by them in the course of this dacoity. The Injury Certificates Exs. P.1 and P.2 do not disclose, in the column of the history of the case, that the injuries sustained by these two witnesses were as a result of dacoity held on 1.10.1987. The complaint was given on 4.10.1987 and there was no proper explanation as to the delay caused by P.W.3 and P.W.5 to file a complaint before the Police regarding this serious offence.

4. Sri N.Sampath Kumar, the learned Advocate for the appellant, submits that, without going to the merits of the case, the appellant is liable to succeed on the ground that, the trial Court was wrong in convicting the appellant alone for the offence under Section 395 by acquitting the other three accused.

5. The learned Advocate placed reliance on a Decision reported in RAM LAKHAN v. STATE OF U.P., : 1983 CriLJ691 In this case, nine accused were tried for the offence punishable under Section 395 of the Indian Penal Code. The trial Court, had acquitted five accused and convicted four. But on Appeal, the High Court acquitted the remaining three accused and convicted one Ram Lakhan. On an Appeal to the Supreme Court by Ram Lakhan, the conviction of the appellant

alone was found to be unsustainable as assembly of five persons is necessary to make the offence under Section 395 IPC. Their Lordships held:

'Before an offence under Section 395 can be made out there must be an assembly of 5 or more persons. On the findings of the Courts below it is manifest that only one person is now left. In these circumstances therefore the appellant cannot be convicted for an offence under Section 395. The High Court has not found that Ram Lakhan was guilty of any overt act so as to bring his case within any other minor offence.'

6. Per contra, the learned Government Pleader has referred to a Decision in *SAKTHU AND ANR. v. STATE OF UTTAR PRADESH*, : AIR 1973 SC760 to contend that conviction of less than five persons can be sustained in a case of dacoity.

7. In the Case referred above, about 14 persons have, admittedly, taken part in the dacoity and the charge was framed only against 8 named persons, stating that they along with 6 others had taken part in the dacoity. The Sessions Court acquitted only one accused who was Accused No. 10 but convicted others. Out of them Accused Nos. 6 and 7 were convicted under Section 395 and they were sentenced to suffer rigorous Imprisonment for 7 years. On an Appeal, the High Court of Allahabad upheld the conviction of Accused No. 1, 6 and 7 only.

8. It is urged before the Supreme Court, relying on a Decision reported in *RAM SHANKAR SINGH AND ORS. v. STATE OF UTTAR PRADESH*, : 1956 CriLJ822 that the offence of dacoity cannot be committed by less than 5 persons and therefore, only three persons having participated, the conviction and sentence is not sustainable. The Supreme Court distinguished the Decision in Ramshankar Singh's case and upheld the conviction of only three persons on the ground that, in Ramshankar Singh's case, six known persons were charged with dacoity and as the High Court acquitted three out of six, the remaining three could not have been convicted for dacoity. Their Lordships have further held that, in the case on hand, that the charge was made apart from the named 7 or 8 accused, there are 5 or 6 others who had taken part in the Commission of the dacoity. Therefore, the number of the accused will be more than 5 when it is added to the accused who

have been convicted and therefore, the sentence and conviction is not bad.

9. Having regard to the law being settled, the conviction of the appellant after acquittal of the three other accused is legally unsustainable,

10. There is also no other overt act attributed in respect of the present appellant nor the trial Court framed any charge on the overt act. Though it is the case of the prosecution that P.W.3 and P.W.4 were assaulted during this dacoity, there is no specific charge made on such assault. Therefore, in the light of the law being settled, the learned Sessions Judge has committed an error in convicting the appellant under Section 395 of the Indian Penal Code.

In the result, this Appeal is allowed. The order of conviction and sentence passed in S.C.No. 17 of 1988 by the learned District and Sessions Judge, Tumkur, on 11.1.1989 is hereby set aside. The appellant is acquitted.

His Bail Bonds shall stand cancelled.

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