Ramdas and ors. Vs. State

Ramdas and ors. Vs. State

SooperKanoon Citation : sooperkanoon.com/430699

Court : Andhra Pradesh

Decided On : Nov-26-1965

Reported in : AIR1966AP344; 1966CriLJ1234

Judge : Sharfuddin Ahmed, J.

Acts : Indian Penal Code (IPC), 1860 - Sections 395 and 400

Appeal No. : Criminal Appeal Nos. 684 to 686 of 1961 and 136 to 138 of 1962 and Crl. M.P. No. 188 of 1965

Appellant : Ramdas and ors.

Respondent : State

Advocate for Def. : Public Prosecutor

Advocate for Pet/Ap. : M.A. Nomani, Amicus Curiae

Disposition : Petition dismissed

Judgement :

Sharfuddin Ahmed, J.

1. The appellants, six in number, figured as A-1, A-2, A-3, A-4, A-6, and A-7 in the trial Court. They along with six others were prosecuted under Section 400 I.P.C. for belonging to a gang of dacoits, which had been formed under the leadership of

one Bishen Singh with the object of habitually committing dacoities and other offences. It was alleged that in furtherance of the said conspiracy the accused participated in a number of dacoities spread over different Districts of Maharashtra, Mysore and Andhra Pradesh, and looted property worth Rs. 77,191/-. One of the persons involved in the said gang by name Mehtab Ali was made approver and a charge was laid against the accused-appellants under Section 400 I.P.C. before the 11 Assistant Sessions Judge, Hyderabad in Sessions Case No. 4 of 1960. The learned Sessions Judge on examining 309 witnesses and marking 243 documents for prosecution and after a prolonged trial convicted the appellants under Section 400 I.P.C. and sentenced them to six years R.I. with a fine of Rs. 200/-each, and in default to suffer six months further R.I. Out of the 12 accused, four were acquitted, one died and one was discharged. The convicted accused have filed these appeals,

2. The allegation against the accused-appellants is that they constituted a gang of habitual dacoits under the leadership of one Bishen Singh. The conspiracy was hatched sometime in August or September 1956 at Begum Bazar. Bishen Singh, a resident of Akkalakot, was occupying a room near Muslim Jung Bridge, Begum Bazar, Hyderabad. That house was taken on rent by one Ramjiwangirji for residence and in a portion of the same Building Bishen Singh was also living in those days. Bishen Singh's relatives and associates were frequently visiting Hyderabad. At the instance of Bishen Singh other accused also joined the gang and Bishen Singh volunteered to procure one rifle. It was agreed that the dacoities should be committed in the neighbouring Districts and so also outside the State after collecting necessary information from the villagers as to the availability of wealthy persons etc. Certain modus operandi was also adopted in the said meeting and it was further decided mutually that equal share should be given to the participants and non-participants alike irrespective of their sex. Only the person who was handling the rifle was to be given a greater share.

3. After this meeting arrangements began to be made for proceeding with the object of the unholy association. The first dacoity was committed at Ghousekonda and property worth about Rs. 14,077/- was looted. The second was also committed at Ghousekonda on the same date and property worth Rs. 58/- was

taken. The third dacoity was committed on 18-11-1956 at Gangeda, the 4th at Gudur on 1-1-1957 wherein property worth Rs. 31,000/- was involved. The sixth was at Garji, where property worth about Rs. 6,000/- was looted. The 7th was committed at Dhanwada, Mahboobnagar on 25-12-1957 and property worth about Rs. 9,000 was looted. The nth was committed at Vattem, Mahboobnagar and the 9th was also at the same place involving property worth about Rs. 4,000. The 10th dacoity pursuant to the designs of the gang was committed at Madharam, Nalgonda on 6-2-1958, the 11th dacoity on 9-3-1958 at Paidpalli, Warangal and the last at Kokut, Hyderabad District on 18-4-1958 in which property worth about Rs. 11,700/- was looted.

4. Thereafter, A-1 and A-3 were arrested on 29-3-1958, A-4 on 19-4-1958, A-2 and A-6 on 3-7-1958 and A-7 on 1-12-1958. The charge-sheet was laid on 22-7-1959. As stated above, the learned Sessions Judge after an elaborate trial involving the examination of as many as 309 witnesses for prosecution delivered the judgment on 21-6-1961 convicting the appellants herein under Section 400 I.P.C. and sentencing them to six years rigorous imprisonment.

5. To substantiate their case and the charge under Section 400 I.P.C. the prosecution mainly relied on the evidence of the approver Mehtab Ali. Fortunately for the accused, this witness has been thoroughly disbelieved by the trial Court. It is not the contention of the prosecution that his evidence has been improperly rejected. The trial court has extensively dealt with the evidence of the approver at pages 13 to 23 of the printed judgment and pointed out the intrinsic defects in his testimony which warrant its outright rejection. Further, the learned Judge has noted discrepancies and the improbabilities in his deposition vis-a-vis the other indirect evidence regarding the meeting and formation of the gang. The numerous discrepancies and improbabilities have been carefully brought out and the finding of the learned Sessions Judge in his own words on a careful appraisal of the evidence is as under:

'Thus from the above appreciation of evidence I have come to the conclusion that approve Mehtab Ali's evidence and the other indirect evidence regarding the meeting for formation of gang and decisions taken in that meeting is not held to be

proved as contended by the prosecution'.

6. In the light of these observations, based its they are on a correct appreciation, it is difficult to look into the evidence of the approver for any purpose. The entire case, therefore, rests on the identification of the accused in the court and in the various identification parades held in fails and other places.

7. It is well settled that the ingredient of the offence under Section 400 I.P.C. is the association of persons for the purpose of habitually committing dacoities and the offence is of a special character. In the absence of evidence of the approver or any other evidence regarding the formation of the association, the existence of an agreement and the participation of persons in the agreement can only be inferred from the circumstances of the case. If on evidence it is established that a number of persons had participated in the dacoity within a short period, it could be inferred that they had formed themselves into an association for habitually committing dacoities. In the instant case, the approver s evidence having been disbelieved the prosecution has to depend on the identification of the accused in the various dacoities to substantiate the charge under Section 400 I.P.C. The trial Court has obviously relying on the identification of the accused in the Court and the identification parades convicted the appellants under Section 400 I.P.C. as, in its opinion, the existence of the association was proved by the participation of the accused in a number of dacoities during a short interval. As stated above, the 1st dacoity took place on 3-10-1956 and the last is said to have taken place on 18-4-1958 i.e., the entire 12 dacoities seem to have taken place within a short space of two years. If it is established by evidence that the accused had participated in these dacoities, it could be safely concluded that they had constituted themselves into a gang. If on the other hand, the prosecution has not succeeded in establishing the participation of the accused in the various dacoities mentioned above no such inference would be warranted. Therefore, it is for consideration how far the evidence on record can be held sufficient to sustain the findings of the lower court.

8. Taking the case of one of the accused individually, viz., A-1, the 1st appellant herein, he (Ramadas s/o Bishen Singh) is said to have been involved in 10

dacoities. Some of these are Gangeda, Gudur, Bhoom, Garji and Vattem. A-2 is involved in five cases: Kokut, Dhanwada, Bhoom, Garji and Paidpalli; A-3 in three cases: Dhanwada, Paidpalli, Chinna Madharam; A-4 in three cases: Dhanwada, Garji and Paidpalli; A-6 in Kokat, Dhanwada, Vattem, Chinna Madharam, Bhoom, Garji and Paidpalli and A-7 in three cases: Kokat, Dhanwada and Chinna Madharam.

9. It is to be noted that in most of the cases the accused have been acquitted. A-1 has not been convicted in any case notwithstanding the fact that he has been involved in 10 dacoities. A-2 has been convicted in one case under Section 411 I. P. C. and also in Kokat case, A-3 has been acquitted in all the cases. Similar is the position with regard to A-4, A-8 and A-7, however, have been convicted in one case i.e., Kokat Dacoity case and sentenced to life imprisonment. The judgment in Kokat case has been delivered sometime in January 1962.

10. The accused had been charge-sheeted for individual dacoities and, as stated above, were acquitted. The evidence against them now is provided by the witnesses who were examined in their individual cases. As against A-1, 18 witnesses have been examined to prove his participation in Bhoom, Garji, Dhanwada, Vattem, Chinna Madharam and Paidpalli cases. Against A-2, ten witnesses have been examined to show his involvement in Kokat, Dhanwada, Bhoom, Garji and Paidpalli cases. Against A-3, four witnesses were examined to prove his participation in Dhanwada, Paidpalli, Chinna Madharam cases. Against A-4, four witnesses have been examined to show his participation in Dhanwada and Paidpalli cases. Against A-6, 15 wit-nesses were examined to show his participation in Kokat, Dhanwada, Vattem, Chinna Madharam, Bhoom, Garji and Paidpalli dacoities. Against A-7, sixteen witnesses have been examined to indicate his involvement in Kokat Dhanwada, Chinna Madharam and Paidpalli dacoities. The witnesses have identified the accused appellants either before the court or in the identification parades held before the various Magistrates and also in one case before a non-official. It is on the basis of this evidence that the Lower Court has found the accused to have participated in the various dacoities.

11. The learned counsel for the appellants has, however, urged that the identification which has been conducted long after the incident is unworthy of credit. He has also pointed out that in most of the cases the accused were in the custody of the Police before identification. None of the witnesses had at the earliest instance in fact at any stage given any description of the accused with reference to their features or overt acts and IK? list of identifiers was furnished to the court beforehand. It has also been stressed that the Magistrates at the time of identification had not taken pains to ascertain from the identification witnesses as to the reasons for their identification, and the identification has been carried on without the necessary care and precaution. The learned counsel has also urged that the accused having been acquitted on the basis of tin's very evidence, they could not be found guilty under Section 400 I.P.C. on the basis of same or similar evidence.

12. So far as A-1 is concerned, the entire evidence in regard to his identification was read out before me in considerable details to indicate how the identification parades were held and in what manner the accused and the identifying witnesses were produced before the concerned Magistrates. To appreciate the arguments advanced, a reference may be made to some of the witnesses who have been examined to substantiate the case. By way of illustration of the procedure followed the case against A-1 may be scrutinised. The 1st witness against him is P.W. 36 Chinna Mohamed pertaining to Dhanwada dacoity in Mahboobnagar District which had taken place on 25-12-1957. This witness was examined on 7-9-1960. According to him he was going from Markal to Kolampally and while passing Dhanwada, which is on the way, he saw 10 or 15 persons in number, in the fields at Dhanwada. On the 2nd or 3rd day he came to know that there was a dacoity at Dhanwada. The Sub-Inspector of Police enquired of him after two or three days and recorded his statement, but in the said statement he never gave the details of the persons whom he had seen in the fields. On 12-3-1958 he went over to Mahboobnagar court to identify A-1 and did identify him as one of the persons who was present in the fields at Dhanwada. A-1 was arrested on 29th March, 1958 and the parade was held on 12-5-1958. It has come on record that only one day prior to the identification he was admitted in the Mahboobnagar Jail. Conceding for a moment that every precaution had been taken to shield A-1 from the gaze of this

witnesses, it is difficult to believe that he could identify a person whom he had casually seen while on his way from Markal to Kolampalli after a lapse of nearly one year, particularly so when he had not given any description of the persons at the time when he was first examined by the Police or before the Magistrate before whom he was produced for identification parades. The learned trial Judge has merely observed at page 33 of the printed Judgment as follows:

'P.W. 36 Chinna Mohd. Kokampalli says that he has seen strangers near Dhanwada and has identified Ramadas in this court and Mahboobngar Court and also in Mahboobnagar Jail, Ext. P-14.'

This is only a bare statement of fact. How the learned Sessions Judge was inclined to accept his testimony has not been mentioned.

13. P.W. 46 is another witness pertaining to the same dacoity. He is the person in whose house the dacoity was committed. After describing the incident in considerable details he stated that he deposed the facts before the C.I. on the 2nd day morning, but admittedly he did not give description of the accused before him. It was only after the arrest of the accused that he identified him in the identification parade held at Mahboobnagar Jail, Admittedly, this was seven or eight months after the incident. Even before identification he did not give out any reasons for the identification of the accused. The learned Sessions Judge has merely summarised his statement at page 30 of his judgment without adverting his mind how this identification of the accused could be relied upon. If he had stated that the particular accused had rough-handled him on that occasion or had a scar on his face or was possessed any distinguishing feature, it could be urged that his identification was entitled to weight. But a mere statement that: 'I would be able to identify the accused' cannot be sufficient.

14. To take another witness, P.W. 66, who was spoken about Vattam dacoity, it would be noticed that the same procedure has been adopted viz., the statement of the witness has been merely reproduced verbatim. This witness also has not given a description of the accused to the investigating officer soon after the incident nor to the Magistrate before identification. The identification admittedly took place six or seven months after the incident. The incident had taken place at about 7 or 8

p.m. i.e., after sun-set when it had become sufficiently dark. The accused may not have stayed for more than 15 minutes or half an hour in that vicinity. In spite of it, to identify the accused after a lapse of 7 or 8 months and that too without giving the descriptive features does not seem to be believed.

15. The entire evidence against all the accused is more or less with same Pattan viz., the witnesses were led to the identification parades held at various places and asked to identify the particular accused. Some of them were able to identify the accused correctly. Others committed mistakes even subsequent to their identification in jails while identifying the accused before the trial court. The learned trial Judge at page 79 of his judgment has observed as follows:

'Most of the witnesses have identified in this court alone have failed to identify the same accused again in cross-examination when the alignment was changed at their back.'

Thus the identification of the accused though no doubt spoken to by a number of witnesses is not entirely free from doubt.

16. Much is made of the fact that the identition was held before the Magistrates after taking the necessary precautions. Even on that score, the position is not entirely satisfactory. To illustrate, one of the Magistrates, who conducted the identification parades is Mr. Kishen Rao, P.W. 183, who was District Magistrate-cum-Sub-Judge at Osmanabad from October 1956 to June 1959. He conducted various jail parades. Exs. P-77, P-78, P-79, P-80, P-81, P-82 pertaining to A-1, A-4, A-2 and A-6 and some of the other accused who have been acquitted sometime in July 1958 at the requisition of the Police. According to his deposition all the necessary precautions were taken but when questioned in the cross-examination as to when the accused were admitted in Jail and whether there was a memo by the Police showing the names of the identifiers, he could not give a satisfactory reply. To make his memos complete he should have recorded when the accused were admitted in jail and whether the list of the witnesses brought for identification had been furnished beforehand or not. Further, he did not examine the witnesses to ascertain the reasons for their identification. No doubt in some of the memos, the reason for identification has been mechanically put down by stating that the

witnesses volunteered to identify as they had seen the accused at the time of the incident. This in itself cannot be deemed sufficient. The object of examining the witnesses and ascertaining the reasons for identification is to ensure if the witnesses who had come for identification had really any reason for remembering or identifying the accused. The mere fact that the accused had been seen by the witnesses at the time of incident could not be a reason for identification. It is to be noted that all the Magistrates who conducted the identification parades have not adverted to this aspect, and as stated above, in one case the identification has been held In police look-up by a worker of the Congress Committee.

Further, in all these cases, the accused were either in the Police custody or were remanded to jail only a day prior to the identification. Thus there is no guarantee for the fact of their not being shown to the witnesses before the actual identification. The plea of the accused that they had been shown to the witnesses before the identification cannot be said to be entirely unfounded. The identification, therefore, on which the lower Court has placed reliance, is hit by the fact:

(i) that most of the accused were in the custody of the Police before the identification and in some cases were remanded only a day before identifications;

(ii) that none of the witnesses had given any description of the accused to the Magistrate before identification;

(iii) that the list of witnesses was not furnished beforehand;

(iv) that the witnesses had bungled in identifying the accused in the court even after their identification in the Jail Parades and lastly

(v) that the jail parades were not held with sufficient precaution to ensure against the possibility of the witnesses seeing the accused even before the identification.

17. The next factor in favour of the appellants is the delay in identification. This is occasioned by the fact that the accused were arrested long after the incidents. Even then the delay has not been sufficiently explained in all the cases. For example, A-1 was arrested on 29-3-1958 and the first parade was held on 24-4-1958 i.e., nearly a month later. The trial court should have set out clearly with

reference to the evidence as to how the delays were explained. In the absence of any such convincing explanations the holding of the parades sufficiently long after the arrests of the accused is a fact which cannot be over-looked. Admittedly, there has been no recovery of property in any of these dacoities. A-2 seems to have been convicted under Section 411 I.P.C. for a period of one month. That would not in any way advance the case of the prosecution for conviction under Section 400 I.P.C. That apart, the fact that most of the accused have been acquitted of the individual cases under Section 395 I. P. C. cannot be overlooked.

18. It is urged that even if they have been acquitted of the offence of dacoity the evidence could be taken into consideration for the purpose of sustaining a conviction under Section 400 I.P.C. Reliance is placed for this purpose on the decision in Gaya Din v. Emperor, (1910) 11 Cri. LJ 551 (Oudh) wherein it has been laid down that a conviction under Section 400 I.P.C. cannot be considered bad in law merely because the evidence on the record would also have justified conviction for a specific offence under Section 396 I.P.C. At page 553 the observation runs as under:

'It is a matter of every day experience that in the course of trial for dacoity a particular accused is only identified as having taken part in the crime by one or perhaps two of the witnesses produced. The Court may see no reason to distrust the good faith of such witness or witnesses, and yet may be of opinion that under the circumstances the possibility of mistake is so great as to render a conviction unsafe. That is no reason whatever why the statement of such witness or witnesses should not be taken into consideration in a trial under the present section along with other evidence tending to prove habitual association on the part of the accused with the persons proved to have committed the particular dacoity in question.'

It is urged therefrom that the evidence which has not been found sufficient to justify a conviction under Section 395 I. P. C. could yet be taken into consideration for sustaining an offence under Section 400 I.P.C. But, that does 'not seem to be the intendment of the said citation. It will be difficult to hold that the witnesses who have not been relied upon for convicting an individual for the offence of dacoity,

could yet be considered for the purpose of sustaining a conviction under Section 400 IPC without other evidence tending to prove habitual association. In other words, if the existence of a gang is established, then there is the possibility of considering the evidence as indication of the participation of the accused in pursuance of their habitual association. But when there is no corroborating evidence in respect of the existence of a gang the same evidence on which an acquital is based cannot be looked into for the purpose of proving the participation of the individuals in the dacoities. No doubt in some cases a conviction under Section 395 I.P.C. may not be found to be prudent on the basis of identification by one witness alone but the same witness may be relied upon for sustaining a conviction under Section 400 IPC. This, however, will be possible when there is evidence to prove the existence of habitual association. In the absence of any corroborating evidence, the testimony of the same witness would not be acceptable for the purpose of a conviction under Section 400 IPC.

19. In the instant case, the accused have, been acquitted of the individual cases on the ground that they have not been sufficiently identified. To hold now that their participation in the various dacoities has been established by: the same evidence would tantamount to arriving at inconsistent and conflicting conclusions.

20. In the case of Bachchu v. Emperor, AIR 1930 Oudh 455 it has been observed that the evidence which though not allowed for the purpose of conviction under Section 395 I.P.C., may yet he relied upon for the purpose of a conviction under Section 400 I.P.C., but this is again with reference to the proof of existing gang. If, in the instant case, the deposition of the approver had been believed and it was found that a gang was in operation, the evidence adduced on behalf of the prosecution to prove the participation of the accused would be referred to for the purpose of arriving at the conclusion that the accused were members of the said gang, but once the testimony of the approver has been discarded the inference of association, can only be gathered from the proof of participation of the accused in the dacoities. If the identification of the accused was not open to any suspicion it might have been possible to hold that they had formed themselves into an association for habitual pursuit of dacoities; but once the identification is found to be defective, it is difficult to sustain the finding of the lower Court.

21. It has been conceded that apart from the evidence of identification there is no evidence to warrant conviction against the accused. As stated above, there was no recovery of the stolen articles worth the name to establish their involvement. The confessional statements of one of the accused has been rejected, the direct and indirect evidence in regard to modus operandi is dependent on the identification of the accused. The mere fact that dacoities have been committed in a particular manner, wearing particular dresses would not in itself be sufficient to hold the accused, guilty of an offence under Section 400.

22. Thus on a careful analysis of the entire evidence, I am of the opinion that the conviction of the accused under Section 400 I.P.C. is not justified. Accordingly the appeals are allowed, setting aside the conviction and sentences of the accused by the trial Court. They will be set at liberty forthwith if not involved in any other case.

23. Criminal Miscellaneous Petition No. 133 of 1965 filed by the State for enhancement in sentences is accordingly dismissed.

24. Amicus Curiae fee, Rs. 500 (Rupeesfive hundred only).