

Queen-empress Vs. Teja and ors.

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Court : Allahabad

Decided On : Dec-31-1969

Reported in : (1895)ILR17All86

Judge : John Edge, Kt., C.J. and; Banerji, J.

Appellant : Queen-empress

Respondent : Teja and ors.

Judgement :

John Edge, Kt., C.J. and Banerji, J.

1. Teja and Zaharia have appealed against sentences of death passed upon them for the offence of dacoity with murder, under Section 396 of the Indian Penal Code. It is clearly proved that on the 29th of April 1892, a dacoity was committed at the village of Hath Kant, in the commission of which dacoity a villager named Janki Prasad was shot dead by one of the dacoits. There is evidence showing that the person who fired the shot was Zaharia. Janki Prasad and the dacoits who actually killed him were outside the house. At the time Teja was inside the house, plundering it. The evidence leaves no doubt that these two men were members of the gang of dacoits engaged actually in that dacoity. As to Zaharia there can be no question that he has brought himself within Section 396 of the Indian Penal Code. But as to Teja it is necessary to consider whether the fact that the murder was committed outside the house at a time when he was inside the house takes his

case out of Section 396. In the case of Queen-Empress v. Umrao Singh I.L.R. 16 All. 437, a Bench of this Court said in its judgment: 'We are also of opinion that to establish a liability to the punishment provided in this section (Section 396) it is necessary to prove that the person said to be liable was one of the persons who were conjointly committing dacoity, and was present when the act of murder in the dacoity was committed.' Further on it was said: 'There is room for such doubt, particularly in the case of Girwar Singh and Raghubar Singh, for there is no evidence which places them within the house of Hira Lal at the time when the murder was committed.'

2. If those two statements to which we have referred are to be taken as of general application, we entirely dissent from their correctness as statements of law. It is probable that in that particular case in which that judgment was delivered Girwar Singh and Raghubar Singh were not proved to have been conjointly with the others committing dacoity. However, on that we need express no opinion. In our opinion it matters not, when in the commission of a dacoity a murder is committed, whether the particular dacoit charged under Section 396 was inside the house or outside the house, or whether the murder was committed inside or outside the house, so long only as the murder was committed in the commission of that dacoity. In our opinion these two men were, properly convicted of the offence punishable under Section 396 of the Indian Penal Code. We dismiss their appeals, and, confirming the convictions and sentences, we direct that those sentences be carried into effect.

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