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Court : Allahabad

Decided On : Jul-18-1924

Reported in : AIR1925All62; 84Ind.Cas.860

Appellant : Bhola and ors.

Respondent : Emperor

Judgement :

Daniels, J.

1. The appellants Bhola Singh, Nanhe, Jurri, Sardar, Likha Singh and Ram Sahai have been convicted under Section 402 of the Indian Penal Code of assembling for the purpose of committing dacoity and sentenced to seven years rigorous imprisonment each, the maximum sentence permitted by the section. Two of the appellants, Bhola and Sardar have also been convicted under Section 19(f) of the Arms Act and given separate sentences of three years rigorous imprisonment each.

2. On the afternoon of 8th March last three of the accused, namely, Bhola, Nanhe and Ram Sahai, came to the village of Naigawan to the well for water. They were strangers to the village. Malkhan Singh, who was at his chaupal near by, became suspicious and noticed that Bhola had a pistol fastened round his neck under his clothing. He and others of the villagers, seized them and tied them up. Malkhan Singh had himself been in trouble with the police at one time and had possibly

been asked by them to render assistance in apprehending suspicious characters. Armed dacoity has been very prevalent in the Budaun district of recent years, and it appears that there had been twenty-seven armed dacoities between 1st January, 1924 and the date of this case. The chaukidar was at once sent off to give information at the thana.

3. In the meantime three other men were noticed running away towards the east.

4. The villagers gave chase and brought back one of them, the accused Likha Singh. Another band of persons were found to be making off to the south. They were also pursued. After a time they separated. Two of them the accused, Jurri and Sardar, were captured after a chase of four miles and brought back to the village. At that time the Sub-Inspector had already arrived. At the time of his arrival he found four of the accused under arrest in the village. Jurri and Sardar were brought in while he was there. Sardar was searched and a quantity of shot and percussion caps found on him. Bhola had already been searched and a pistol, six packets of gunpowder, five percussion-caps and two packets of shot were recovered from him. Bhola and Sardar came from widely separate villages, indeed Sardar is a resident of the Shahjahanpur district, but different portions of the same manual of bayonet training were found in their respective possession.

5. This fact is in itself very strong evidence that they were associated together and had not come to the village independently.

6. In addition to the evidence of the capture and search of the accused there is the evidence of Tej Singh who appears to have been examined by the police the same day. He deposes to seeing some fifteen men approaching the village from the south that afternoon. Outside the village they split up into three bands. Three of them went directly into the village, while the other separated off to the east and west. Tej Singh was too far to identify them, but on coming into the village he found that four of the accused had already been caught by the villagers. He told the villagers of the eight men who had separated from the others to the west, and this led to the pursuit and capture of the two remaining accused Jurri and Sardar.

7. The only question in the case is whether the learned Judge was justified in concluding from this evidence that the accused were members of one party and that they had collected for the purpose of committing dacoity. It appears to me that when all the circumstances are taken into account this is the only conclusion to which the Court could reasonably come.

8. The learned Judge has referred to the case of Queen Empress v. Bhola (1901) 23 All. 124, which is in many respects similar. The accused are all residents of different villages and they mostly live at a great distance from the village where they were caught. The villages of Bhola and Nanhe are 18 miles distant, those of Ram Sahai and Likha four and a half miles distant, that of Jurri 15 miles distant, and Sardar is a resident of another district. They give a number of separate reasons, for the most part entirely improbable, to account for their being caught in the village of Naigawan.

9. When the evidence of Tej Singh is considered in connection with what immediately followed, it is impossible to doubt that the accused were members of the party seen by Tej Singh which separated as it approached the village. Jurri and Sardar Were captured after a long chase at a considerable distance from the village, but on Sardar being searched a portion of the same manual was found in his possession, another part of which had already been recovered from the accused Bhola. The circumstances under which the accused were found and the possession of arms and ammunition by two of them fully justify the presumption that their object was the commission of dacoity. If they were there for some innocent purpose, it would be easy for them to displace the presumption against them by stating what the purpose was. Instead of doing this they denied all association.

10. I therefore uphold the convictions of all the accused, I do not think, however, that the learned Judge was justified in imposing the maximum sentence allowed by law. I accordingly reduce the sentences of all the accused under Section 402 to five years rigorous imprisonment each, and the sentence on Sardar under Section 19 of the Arms Act to two years' rigorous imprisonment. As Bhola was in possession of a pistol, the sentence passed on him under the Arms Act will remain

unaltered.

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