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Court : Allahabad

Decided On : Oct-06-1948

Reported in : 1949CriLJ379

Judge : Wanchoo and; Agarwala, JJ.

Appellant : Ram Samuj and ors.

Respondent : Rex.

Judgement :

Wanchoo, J.

1. This is an appeal by Ram Samuj against his conviction under 8. 412, Penal Code. Izhar and Basil have appealed from jail against their conviction under Section 395, Penal Code.

2. The case relates to a dacoity at the house or shop of Mata Badal of village Gorari Khalil in the district of Jaunpur. The dacoity took place on the evening of 26th October 1943, at about a or 8.30 p. m. The report was made in the Thana at 2 a. in. the same night, and the number of dacoits was mentioned at about twelve or thirteen, The story for the prosecution was that while Mata Badal and other members .of his family were still awake, five or sis men suddenly cams into the house and caught hold of Mata Badal. They were armed with various weapons and caused injuries to Mat Badal and forced him to disclose where he kept

valuable property. Four or five other dacoits also entered the house after the first five or six and broke the boxes and took away ornaments, clothes and other property belonging to Mata Badal. Among the dacoits a number were recognised, namely, Nihore, Ghhatanki, Sheodihal and Manorath Ahir, and their names were mentioned in the first report. A rather incomplete list of the property that was stolen was also given in the first report.

3. The Sub-Inspector in charge of Thana Shabganj took up the investigation immediately. It is said that on his arrival at the village, two lists of further property which was said to have been stolen were handed over to him on 27th October. The Sub-Inspector first arrested Manorath Ahir who had been mentioned in the first report. Next day, that is on the 28th, on further information received, he arrested Balai and Bipat. He also arranged for the arrest of Rajdeo through the Second Officer. this arrest took place on the morning of 29th October in village Aran. On the same day, Sub-Inspector Ghulam Ahmad Khan went to village Aran at about 8-80 a. m. He inquired from Rajdeo and came to know that some looted property of this dacoity was with Ram Samuj appellant. He therefore arrested Bam Samuj who also is a resident of village Aran. Thereafter Earn Samuj took the Sub-Inspector to his field of dhan and from a part of the field brought out four bundles containing silver ornaments which were kept hidden in the mud. These ornaments were taken in possession by the police and sealed then and there. Thereafter, Earn Samuj told the police that he had melted certain ornaments and had a bar of mixed gold and silver in the iron safe in his house. He was taken to his house and brought out the bar of silver from his safe and handed it over to the police. This was also taken in possession. Thereafter Rajdeo as well as Bam Samuj were sent to-the Thana. The investigation continued and after various other persons had been arrested, there was an identification proceeding, in which a number of persons were identified. Consequently thirteen persons in all including the three appellants before us were put up for trial. Earn Samuj, however, was only charged under s, 412, Penal Code. The learned Judge has convicted eight out of the thirteen and has acquitted five. We have before us the appeal of two, namely Dasu and Izhar who were convicted under Section 395, and of Bam Samuj who was convicted under Section 412, Penal Code.

4. We shall take the appeals of Izhar and Dasu first. They have been named by Rajdeo, one of the accused in this case. This man Rajdeo made a confession after his arrest. He stuck to the confession right up to the Court of Session and said that he had taken part in the dacoity. He made only a slight change in his statement in Court, namely, that four of the persons whom he had mentioned in his confession were expected to come and take part in the dacoity, but actually did not arrive in time to do so. He stated that he was a bit confused when he made his confession before the Magistrate and, therefore, said by mistake that these four which included the two appellants Izhar and Dasu had also taken part in the dacoity. The learned Judge has not quite believed this part of the statement of Rajdeo. But it is remarkable that the total number of persons mentioned by Rajdeo in his confession was eighteen. If these four persons, who, according to his later statement, were to come but did not arrive in time to join the dacoity, are taken out, we would be left with only fourteen and this number almost tallies with twelve or thirteen mentioned in the first report. Therefore the statement of Rajdeo, to the effect that these four persons did not arrive in time, may very well be true, corroborated as it is by this part of the first information report, and he may very well have made a mistake when he said before the Magistrate that these four had also come and taken- part in the dacoity, Anyhow, this is a point which is in favour of these two appellants.

5. There is another point which is also in their favour. The evidence of Kanhaiya Lai is that he had identified Dasu appellant at the time of the dacoity. He admitted that he knew Dasu for about six months or so before the dacoity. He also admitted that he had gone to the house of Mata Badal after the dacoity was over and had stayed there for a short time. His evidence is that. Mata Badal left for the Thana about two or three hours after the dacoity. Under these circumstances, Mata Badal should have been told by Kanhaiya Lai that one of the dacoits identified by him was Dasu Ahir. If so, his name should also have been mentioned in the first report. The absence, therefore, of Dasu's name from the first report is another circumstance in his favour. Similarly, the evidence of Vinayak Prasad, P. W., is that he knew Izhar appellant from before. He saw Izhar at the time of the dacoity when he had gone to the house of Mata Badal on hearing the alarm. Izhar, however, stopped him from going near the house or shop and took up a lathi for

hitting him and asked him to run away, Vinayak Prasad therefore ran back to his house out of fear. It has been urged on behalf of the Crown that Vinayak Prasad's evidence does not show that he had occasion to meet Mata Badal before Mata Badal went to make the report in the Thana, But his evidence does show that Mata Badal sent for Vinayak's ekka 2j or three hours after the incident and that Vinayak Prasad got the ekka ready and sent it for Mata Badal. It seems to be difficult to believe that Vinayak Prasad should not have gone back to Mata Badal's shop for these three hours to find out what the dacoits had done to him. It is also impossible to believe that, though Vinayak Prasad sent his ekka for Mata Badal to take him to the Thana, he did not think it worthwhile and never informed him that one of the dacoits had been recognised by him and that his name was Izhar. We are satisfied that the name of Izhar should have been mentioned to Mata Badal and must have been mentioned by Vinayak Prasad before Mata Badal went to the Thana to report. In that case his name should also have been found in the first report, but it is not there. It is true that there is evidence of identification which might otherwise have been sufficient for the conviction of these two appellants. But considering the later statement of Rajdeo and the statements of Vinayak Prasad and Kanhaiya Lai, we are of opinion that the case against these two appellants is doubtful and they are entitled to the benefit of the doubt.

6. This leaves the case of Ram Samuj appellant. The evidence against him consists of the statement of Rajdeo, which we have already noticed, and the statements of the Sub-Inspector and two witnesses, namely, Abdur Raheem and Qamaruddin. The Sub-Inspector says that he went to village Aran on the morning of 30th of October and after some talk with Rajdeo had called Ram Samuj appellant. Ram Samuj then took him to this dhan field of his and brought out these 47 ornaments which have been identified to belong either to Mata Badal or to persons who pawned them with Mata Badal. There is, in our opinion, no reason to disbelieve the evidence of Sub-Inspector Ghulam Ahmad in this connection. His statement has been supported by Abdur Raheem and Qamaruddin. So far as Qamaruddin is concerned, it has been urged that he had some reason to be annoyed with Ram Samuj because there had been litigation between Ram Samuj and his father on one side and some relations of Qamaruddin. Qamaruddin has admitted that, and to this extent Qamaruddin's evidence may not be quite

independent. But there is no enmity worth the name between Ram Samui and Abdur Raheem. All that has been brought out is that Abdur Raheem's brother Abdul Raha-man, was a mortgagee of certain property of one Siddiq, The equity of redemption of that property has been purchased by Ram Samuj who has not yet obtained possession of the property. These facts do not, however, give rise to the inference that there is any enmity between Abdur Raheem and Ram Samuj, It has been urged that mortgagees generally do not like third persons to purchase the equity of redemption. But from this general possibility, we cannot draw the inference that the brother of a mortgagee had reasons to bear enmity towards the third person who had purchased the equity of redemption of the property mortgaged. So far, therefore, as Abdur Raheem is concerned, there was no reason for him to implicate Bam Samuj falsely. We have, therefore, no doubt that these ornaments were brought out from under the mud by Ram Samuj from his own dhan field.

7. This is one fact established against him. Then comes the statement of Rajdeo to which we have already referred. Rajdeo's statement shows that he and some of his companions who are said to have taken part in this dacoity were already in touch with Earn Samuj before this dacoity. After the dacoity was over, Rajdeo and a few others, numbering seven or eight in all, came to village Aran in the night. They sent for Bam Samuj at the temple through one of them. When Bam Samuj came he was given the ornaments which had been looted in the dacoity at the house of Mata Badal. As we have already mentioned, the ornaments which Bam Samuj brought out from under the mud are the same which have been proved to have been looted from the house of Mata Badal. It has been urged that the evidence of Rajdeo should not be believed. We see no reason to disbelieve the evidence of Rajdeo. It is remarkable that he made a confession and has stuck to it throughout, be much so that he has been convicted on the basis of it. Under Section 30, Evidence Act, we are entitled to take this confession into consideration against Bam Samuj also. An attempt was made on behalf of Bajn Samuj to show that there was some enmity between him and Rajdeo. That attempt has miserably failed. One witness had been produced to say that Rajdeo's mare and cow were grazing in the field of Bam Samuj and Bam Samuj and his brother came and abused Bajdeo and slipped him. This had happened 2 years before. We not do

believe this evidence. It is very easy to come forward and allege an enmity of this kind. Lastly, it was urged that Rajdeo's evidence should not be believed either because he made come change in the statement with reference to four dacoits including Izhar and Danu, or be-cause some of the persons whom he had mentioned have been acquitted. We have already dealt with that part of Rajdeo's statement where he haa made a change and we think that it may very well be that what he stated later may be true. In any case that change does not affect his evidence so far as Bam Samuj is concerned As for the fact that some of the persons named by Rajdeo have been acquitted by the Court on the ground that there is no sufficient evidence for their conviction, or on the ground that there is some doubt about their having taken part in the dacoity, that is no reason for disbelieving the entire evidence of Rajdeo. We are, therefore, satisfied that Rajdeo's statement can be taken into account against Bam Samuj and there is no reason why we should not take it into account and give it its due weight.

8. The position finally comes to this that some property which was looted from the house of Mata Badal was handed over, according to the evidence of Rajdeo, to Bam Samuj by seven or eight of the dacoits. That very property was practically handed over by Bam Samuj appellant to the police after taking it out from under the mud in his field two days after the dacoity. It also appears that Bam Samuj had previous connection with the same persons who had given him the property because they had met him before the dacoity took place. The property ap-pears to have been handed over to him in the night near a temple and not at his house. Under these circumstances one can draw the inference that it was Bam Samuj himself who had hidden that property under the mud and that though it was in his field it was in his possession. We can also presume that Bam Samuj knew or had reason to believe that the possession of the property had been transferred by the commission of a daooyity under the circumstances of this case.

9. It has been urged on behalf of the appellant that under S 114, illustration (a), Evidence Act, we cannot presume from the mere fact that stolen goods were found soon after the theft with a certain person, that he knew that the goods had been transferred by the commission of the daooyity, though we may presume that be was either the thief or had received the goods knowing them to be stolen

property. In this connection, reliance has been placed on *Empress v. Malhari*, 6 B.M. 781 and *Surendra V. The Emperor* 410. W. N. 639. The same view is expressed in *Narayan Dinba v. Emperor* A.I.R. (34) 1947 Nag. 67 : (47 Cr. L. J. 82). In the first case it was held that the fact of stolen property being concealed in a man's house would be sufficient to raise a presumption that he knew the property to be stolen property, but it would not be sufficient to show that it had been acquired by dacoity. In the second case it was held that:

In order to establish an offence under Section 412, Penal Code, there must be some evidence to show that the accused knew or had reason to believe that the property was stolen in course of dacoity. Such knowledge or belief cannot be presumed from mere possession of stolen property in the case of a person who being charged merely as a receiver was *ex hypothesi* not present at the dacoity.

We are in entire agreement with this view of the law. The prosecution has to show something more than the mere possession of stolen goods if a conviction under Section 412, Penal Code, is to be sustained.

10. A contrary view seems to have been taken in *Ram Sarup Singh v. King-Emperor*, 9 Pat. 606 at p. 616 : (A.I.R. (17) 1930 Pat. 613: 82 Cr. L. J. 72). But no reasons have been given in support of that view, and we find ourselves unable, with all due respect to agree with that view.

11. In the present case, however, we are of opinion that there is further evidence which would justify the inference that Bam Samuj in this case knew or had reason to believe that the property had been transferred by dacoity. We have already pointed out that he was in touch with the people who committed the dacoity before the dacoity was committed. He received the property soon after the dacoity had been committed and as many as seven or eight persons came to him and handed him over the property apparently some time at night at the temple and not at his house. Under these circumstances, he could not shut his eyes to the facts and it must be held that he had reason to believe that the property which he was purchasing for ES. 360 had been transferred by the commission of the dacoity.

12. The only other point that has been urged is that the appellant was a Sonar and could have melted the property in the same way as it is suggested that he melted some other property. It is very difficult for us to enter into the mentality of a criminal and find out why he melted a particular part of the property and why he did not melt the rest. The evidence being clear and credible, it must be accepted and we have no doubt that so far as these ornaments were concerned they must have been put under the mud in that field by no one else than Bam Samuj appellant. Under these circumstances his conviction under Section 412, Penal Code, is correct. We see no reason to interfere with the sentence in his case.

13. The result, therefore, is that the appeal of Izbar and Dasu is allowed and they are given the benefit of the doubt and acquitted. They will be released at once if not required in any other connection. The appeal of Bam Samuj is dismissed. He is on bail. He will surrender at once and serve out his sentence.

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