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Court : Allahabad

Decided On : Jul-08-1908

Reported in : (1908)ILR30All540

Judge : Richards and ;Karamat Husain, JJ.

Appellant : Emperor

Respondent : Kheoraj and ors.

Judgement :

Richards and Karamat Husain, JJ.

1. The three appellants Kheoraj, Ilahi Bakhsh and Thannu, or Thanwa, have all been convicted under Section 399, Indian Penal Code and sentenced to transportation for life. On the 29th January last a large band of dacoits attacked the house of one Dinanath Bania of mauza Badhaiti Fazalpur. The dacoity was a most lawless and audacious one. The dacoits were armed with lathies, pistols, revolvers, daggers and knives. However, the villagers were prepared for the dacoits and attacked them with considerable courage. One of the dacoits was killed by his own friends by mistake. The villagers managed to secure the corpse, which no doubt largely assisted in bringing the criminals to justice. One of the villagers was badly wounded and afterwards died. Sixteen persons were put on their trial on a charge of having taken part in the dacoity. Fourteen were convicted and all sentenced to transportation for life. Two only of the persons charged were

acquitted. Of the persons who were convicted Kheoraj, Ilahi Bakhsh and Thanwa alone have appealed. The only question before us is whether or not it has been sufficiently proved that each of the appellants took part in the dacoity. A man named Girdari Singh turned approver, He was pardoned and examined as a witness. Chidda, one of the persons who was convicted, was evidently anxious to become an approver. He made a complete confession of his own guilt, which, strange to say, he adhered to even in the Sessions Court. In the Sessions Court he pleaded guilty. It was pointed out to him that the confession would not save him from punishment. He nevertheless said that he was in the dacoity. Towards the end of the judgment the learned Judge says that 'the Court convicts Chidda on his own plea of guilty.' We think it necessary at this stage to point out to the learned Judge an error in his conduct of the trial of the case. Notwithstanding Chidda's plea of guilty, he kept him in the dock with the rest of the accused. He 'considered' the confession of Chidda in considering the question of the guilt or innocence of the other accused. Furthermore at the conclusion of the evidence for the prosecution he put the following question to Chidda 'who were with you in the dacoity?' Section 271, clause 2, of the Code of Criminal Procedure, provides that if the accused pleads guilty the plea shall be recorded and he may be convicted thereon. It often happens that when an accused person is called upon to plead he makes a statement which may or may not amount to a plea of guilty, and it is frequently very proper that the Court should enter a plea of not guilty and proceed with the evidence. However, if there are a number of other persons being tried at the same time for the same offence the Court certainly ought not to postpone the conviction of the accused merely for the purpose of allowing the statements he may have made to be considered against the co-accused. We think that if the Court was prepared to have convicted Chidda on his plea of guilty (supposing he had been tried by himself) it ought to have at once convicted him, Section 30 of the Evidence Act provides that a confession made by one person can be considered against other persons who are being tried jointly for the same offence. In our judgment where an accused person has pleaded guilty and the Court is prepared to convict on that plea, it is contrary to the spirit of the law to postpone the conviction so that the person who has pleaded guilty may technically be said to be tried jointly for the same offence. See the case of the Queen Empress v. Faltua

(1900) I.L.R. 23 All. 53. Section 342 of the Code of Criminal Procedure gives power to the Court at any stage of the trial to put questions to the accused for the purpose of enabling such accused to explain any circumstance appearing in the evidence against him. The section further directs at the close of the case for the prosecution to question the accused generally on the case. But the general examination is only to be for the purpose of enabling the accused to explain the circumstances appearing against him in the evidence. The question put to Chidda, namely, 'who were with you in the dacoity?' was a highly improper question, if Chedda had never pleaded guilty. We now proceed to deal with the case of each of the appellants, discarding the confession and other statements of Chidda. Thanwa is mentioned by Girdhari the approver. Only one other witness identifies him, viz., Suraj Mal. Suraj Mal made a mistake and identified a man as having taken part in the dacoity who could not have been there. This mistake was a mistake made by several of the other witnesses, and is perhaps explained by the fact that the man whom he purported to identify bore a striking resemblance to one of the dacoits. Thanwa from the commencement has stated that he was ill at the time the dacoity was committed. He examines several witnesses to support his allegation. He does not say that Girdhari himself bore him any enmity, but he says that a friend of Girdhari's, namely, Roshan Singh, instigated Girdhari to name him. We think there is some doubt as to the guilt of Thanwa. Kheoraj is identified by the approver Girdhari. The learned Judge says that he was identified by Dinanath and Jiwa Ram in jail and in the lower Court by Dallu. No one identifies him except Girdhari in the Sessions Court. His case is that Girdhari bore him an ill-will. He says also that he had taken two accused persons from Gariwan to the police station at Rajpura on the day the offence was committed. One witness whom he calls proves that he did bring the prisoners to Rajpura on the 29th of January and that he left the same immediately as he had 'urgent business.' It appears that the scene of dacoity is ten kos from Rajpura. He also examined a witness named Mizam. We think that the evidence in the Sessions Court is insufficient, or at least that a reasonable doubt exists in the case of Kheoraj also. Ilahi Bakhsh is identified by a number of witnesses in addition to the informer Girdhari. Dinanath, Dallu, Chhutan, Fajji and Jiwaram son of Kewal, all identified him. We think that the case was fully proved against Ilahi Bakhsh. We allow the appeals of Thanwa

and Kheoraj and setting aside the convictions and sentences in their case, we acquit them of the charge on which they were tried and direct that they be released. We dismiss the appeal of Ilahi Bakhsh and we direct that a copy of our judgment be sent to the learned Additional Judge of Moradabad.

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