

Dungar and ors. Vs. Emperor

Dungar and ors. Vs. Emperor

SooperKanoon Citation : sooperkanoon.com/460164

Court : Allahabad

Decided On : Apr-29-1926

Reported in : AIR1926All603; 95Ind.Cas.938

Appellant : Dungar and ors.

Respondent : Emperor

Judgement :

Banerji, J.

1. This is an appeal by seven persons who have been convicted and sentenced to 7 years' rigorous imprisonment and a fine of Rs. 200 each under Section 457 of the Indian Penal Code. The Appellant No. 4, Ghasita, I am informed by the learned vakil for the appellants is dead. I have, therefore, considered the case of six of these appellants. The facts are that the Collector of Bulandshahr was camping at Dadri and thieves entered the tent in which Mrs. Acton and four children were sleeping with property of considerable value. The thieves did not steal any of the jewels which were in cases in the same tent. No trace of the thieves could be found until the Sub-Inspector received some information that Dungar, the first appellant, was concerned in the theft; and he sent for Dungar, who made a confession before the Magistrate on the 27th November 1925.

2. Investigation followed, and 12 persons were sent up for trial before the learned Sessions Judge of Bulandshahr. Ten of them were charged under Section 457

and two under Section 457 read with Section 109. The learned Judge has, therefore, disbelieved a considerable portion of the elaborate confession, of Dungar. Even if he has not disbelieved it, he has declined to act on that confession. I have read the evidence and have heard the learned vakil appearing on behalf of the appellants and the learned Government Pleader. It has been proved clearly that the tent in which Mrs. Acton was sleeping was burgled early on the morning of the 21st November 1925. The only point for consideration is whether the conviction of the appellants can stand in view of the fact that the evidence against four of them is only the retracted confession of their co-accused Dungar.

3. A Bench of this Court in the case of. *Kalwa v. Emperor* : AIR1926 All377 has held that a criminal Court may make the presumption that an accomplice is unworthy of credit unless he is corroborated in material particulars; and where there was nothing in the case outside the confession of a co-accused pointing to his complicity in the crime of murder, the appellant must be acquitted. The case of Dungar is to my mind perfectly clear. He confessed to his complicity in the crime, and he admitted his confession in the Court of the committing Magistrate.

4. I am, therefore, of opinion that there is nothing in Dungar's case. He has been rightly convicted. As regards Shahmal, the evidence is purely circumstantial; and I am not prepared to take a different view from that taken by the learned Sessions Judge. The case of Bhajjan, Bhoosya, Bhajwa and Sirya to my mind, is different. The only evidence against Bhajjan, Appellant No. 2, rests on the retracted confession of Dungar; and the fact that he was identified by Dungar at an identification proceeding held by a Magistrate of the First Class, Dungar, in his confession, mentioned Bhajjan; and in his statement before the committing Magistrate also mentioned him by name. It, therefore, appears to me that the mere identification of an accused person by a confessing accused, who admittedly knew him, is absolutely no corroboration of the statement of the confessing accused. Under Section 30 of the Indian Evidence Act, the confession of a co-accused can be taken into consideration; but in the absence of any evidence I am of opinion that it is unsafe to convict Bhajjan, when there is no corroboration. The identification, in my opinion, is a mere farce. Moreover, the greater part of the

confession of Dungar reads like a fairy tale; and I can place no faith on it without corroboration. Moreover, the defence has clearly made out that a subpoena was issued to this accused for his attendance on the 28th November 1925. Although the Sub-Inspector, Hargayan Singh, did not sign this subpoena, yet in the absence of an explanation as to why he was ordered to be present at the police station on the 28th November, and in view of the fact that as early as the 24th November the Sub-Inspector knew that Bhajjan was one of the accused, I cannot act on the mere retracted confession of a co-accused, when there may be some truth in the statement of Bhajjan that he was sent for, for the purpose of being identified by Dungar. It is certainly a very suspicious circumstance; and I am not prepared to take the view that the learned Judge has taken of that incident. As regards the case of Sirya, Bhoosya and Bhajwa, there is nothing but the retracted confession of Dungar. The mere fact that the accused were not found at their house and that they were absconding is no corroboration of the retracted statement of Dungar. I am therefore of opinion that their conviction cannot be maintained. The result is that I dismiss the appeal of Dungar and Shahmal, and allow that of Bhoosya, Bhajwa and Sirya, set aside their conviction and sentence, and direct that they be released forthwith.

5. The heavy sentence of 7 years' rigorous imprisonment has been given by the learned Judge on grounds which do not commend themselves to me. I am clearly of opinion that the fact that a particular individual, who happens to be a Collector, has his house burgled cannot be taken into consideration in awarding sentence, which to my mind would never be inflicted in the case of an ordinary burglary. I would have inflicted a lesser sentence but for the fact that a lady's tent was burgled.

6. I reduce the sentences passed on Dungar and Shahmal to three years' rigorous imprisonment. The sentence of fine is maintained. The fine if realized, will be paid as compensation to Mrs. Acton.