

State Vs. Wahid Bux and ors.

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Court : Allahabad

Decided On : Aug-21-1952

Reported in : AIR1953All314

Judge : Raghubar Dayal and ;Agarwala, JJ.

Acts : [Evidence Act, 1872](#) - Sections 9

Appeal No. : Criminal Appeal No. 704 of 1949

Appellant : State

Respondent : Wahid Bux and ors.

Advocate for Def. : S.P. Kunwar, Adv. (for No. 3), ;Bageshwari Sahai, Adv. (for No. 1) and ;B.D. Pande, Adv. (for Nos. 2, 4, 5 and 6)

Advocate for Pet/Ap. : J.R. Bhatt, Asst. Govt. Adv.

Judgement :

Agarwala, J.

1. This is a Government appeal against the acquittal of respondents Wahid Bux, Dori, Chandu, Badam, Devi and Buddha.
2. The respondents along with, several others were prosecuted for having committed dacoity armed with guns at the house of one Thakur Prasad in the night

between 4th and 5th March 1918 in village Lahdaura, district Budaun. Fifteen persons were prosecuted by the police. One of them was discharged by the Committing Magistrate. Out of fourteen who were committed to the Court of Session, only two, namely Mian Jan and Parshadi, who were caught on the spot, were convicted. The rest were acquitted. Out of the twelve acquitted persons, the Government has filed an appeal against the six respondents only.

3. That there was a dacoity at the house of Thakur Prasad in the night in question is not disputed. In this dacoity 20 or 25 dacoits took part. Some of them were armed with guns, some with spears and others with lathis. Property worth about Rs. 30,000 was looted. The villagers came up on the scone and gave a light. In the light some of the villagers and some of the dacoits were injured. Two of the dacoits, Mian Jan and Parshadi, were caught by the villagers and handed over to the police. A pistol and cartridges were recovered from Mian Jan.

4. The question with which we are concerned is whether the six respondents or any of them participated in the dacoity. The evidence against some of the respondents consists both of recovery of certain articles from their possession and of identification and against others it consists of identification alone. There were several identification parades in jail. One was held on 7-4-1948, another on 27th May, the third on 29th May, the fourth on 12th July, the fifth on 29th July, the sixth on 18th August and the seventh on 21-9-1948. Some of the witnesses appeared in more than one of the parades. The articles which were recovered from the possession of some of the respondents were put up for identification. The articles had chits attached to them. The Judicial Magistrate, who conducted the identification, was unable to say whether similar chits were placed on the other articles which were mixed with the articles to be identified. If no such chits were placed on the other articles, it was very easy to pick up the articles with chits. This would be no identification at all.

Further the articles recovered were of a very ordinary type. For instance, from Waliid Bux a Dua, a Jugnu and a patta were recovered. From Dori completely torn coat and a dhoti were recovered. From Chandu a lota, a tumbler, a longe were recovered. Nothing was recovered from the other respondents. These articles

were of ordinary kind and could be found with anybody in the village and the witnesses did not point out any special features or marks of identification on them. They were not able to say to whom the articles belonged. In this view of the matter the learned Sessions Judge did not draw any inference from the fact that these articles were recovered from the possession of the aforesaid respondents. We are of opinion that the learned Sessions Judge was right in rejecting the testimony relating to the recovery of the articles.

5. We are, therefore, left with the identification alone. The learned Sessions Judge rejected the testimony of identification also on one general ground which related to all the respondents. This was that in the first information report it had been stated that the village people set fire to a chappar of Thakur Prasad's house and that when its light spread the dacoits began to run away. The learned Sessions Judge concluded that since the dacoits ran away as soon as the chappar was set fire to, there was not enough time for the witnesses to identify them. This reasoning has not appealed to us. It appears that either the village people or the dacoits themselves set fire to the chappar of the house of Thakur Prasad probably after they had looted the house and were going out of it and were about to retire. But the villagers who had collected there gave a fight. In that fight both the parties were injured and two of the dacoits were caught as already stated. All this must have happened while the chappar was burning and there was sufficient light. The villagers had thus time to see the dacoits. It cannot, therefore, be said that there was no occasion for them to see the faces of the dacoits. We are, therefore, unable to discard the evidence of identification on this general ground.

6. It was urged before us by learned counsel for the respondents that identification suffered from the non-inclusion of a sufficient number of persons along with the accused at the time of identification. It appears that more than five times as many persons as the accused were mixed up with the accused. There were altogether 17 accused and 97 persons were mixed up with them. Therefore the proportion of the accused in the whole assembly was about one-sixth. It was urged that the number of persons to be mixed up with the accused should have been ten times. We do not think that there is any such general rule. Of course, it is always better to have as large a number of persons mixed up with the accused as possible. But no

hard and fast rule can be laid down and we are of opinion that if five times the number of the accused persons are mixed with them, it cannot be said that there is any flaw in the identification proceedings.

7. Wahid Bux was identified by no less than five persons, Thakur Prasad, 'Ram Murti, Rangi Lal, Shib Charan and Ram Charan. In his case there is a certain amount of doubt as to whether he was shown to the witnesses or not. Wahid Bux was arrested on 7-4-1948. On the same day he was taken to jail and that was the day when identification proceedings were to be held. The Magistrate who was to hold the identification proceedings, however, arrived very late at about 3 in the afternoon. For all this time the witnesses must have been waiting outside the jail. There is, therefore, a likelihood that when Wahid Bux was being taken to the jail he may have been shown to the identifying witnesses. This fact, therefore, creates a reasonable doubt in our minds about Wahid Bux having been seen by the identifying witnesses. We are, therefore, unable to convict him on the testimony of the identifying witnesses alone. There is, therefore, no reason to interfere with the order of the Sessions Judge so far as Wahid Bux is concerned.

8. Dori respondent was identified by two witnesses, Shib Charan and Rukmi. The identification of Dori took place on 7-4-1948. Shib Charan made no mistake and identified Dori as well as other accused correctly. Rukmi identified six correct persons and made two mistakes only. In spite of two mistakes Rukmi's identification would be considered to be a good identification, specially having regard to the fact that Rukmi was one of the villagers who was injured in the fight. The learned Sessions Judge discarded his evidence because he identified two wrong persons in two subsequent identification parades. These two parades were held on 27-5-1948 and 29-7-1948. The first one of them was obviously a month and 20 days after the first identification in which Dori accused was put up and the second was even later. The learned Sessions Judge lumped up the result of all the identification proceedings and in this way considered the value of identification of each witness.

9. The question in such cases is whether we can rely upon the identifying witnesses. Normally the result of identification proceedings in which a particular

accused was put up must alone be taken into consideration in deciding this question. It is upon the basis of it that it must be held whether identification is good and reliable or fit to be discarded. Other identification proceedings in which the particular accused was not put up for identification and other accused were put up are immaterial except in so far as an inference may be drawn against the power of observation of the witnesses. This inference may be drawn from these other identification proceedings when they were held either prior to the identification proceeding relating to the particular accused or simultaneously with or shortly after it. But no conclusion can be drawn from these other identification proceedings if they were held long afterwards, because by the lapse of time a witness may lose that freshness of impression which he might have retained at the time when the proceeding connected with the particular accused was held. Therefore identification proceedings held long after the particular proceeding with which the Court is concerned should not be taken into consideration in weighing the evidence of identification with regard to a particular accused. Tested in this light the identification of Dori by Rukmi was 75 per cent correct and was, therefore, a good identification. Taking it along with the identification of Shib Charan which was 100 per cent, correct there was sufficient evidence for the, conviction of Dori.

9a. His Lordship considered the individual cases and proceeded.

10. The result, therefore, is that we allow this appeal against Dori and Badam and we dismiss the appeal against the other respondents. We set aside the order of acquittal of Dori. and Badam and convict them under Section 395, Penal Code. It has been urged that they have been in detention in jail after the institution of the appeal in this Court for about three years. In view of this fact we sentence Dori and Badam to four years' R. I. only.

11. The other respondents, Wahid Bux, Chandu, Debi and Buddha, shall be released from custody forthwith unless required in connection with some other case.

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