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Court : Allahabad

Decided On : Feb-02-1938

Reported in : AIR1938All227

Appellant : Emperor

Respondent : Bansi and ors.

Judgement :

Collister, J.

1. This is reference under Section 307, Criminal P.C. Six persona, Bansi, Jagan, Sajwa, Harwa, Saikwa and Sheoraj, all Pasis by caste, were tried before the Assistant Sessions Judge of Allahabad on a charge under Section 457, Penal Code. It was a jury trial and the jury returned a unanimous verdict of guilty. The Judge disagrees with that verdict and has referred the matter to this Court. The case for the prosecution was as follows : At about 11 p.M. on 16th May 1937 Munshi Kabir Ahmad, the station officer of the Nawabganj police station, received information that a bur. glary was to be committed that night at the house of a gadaria named Bhagwandin, a resident of Bhagwanpur. The station officer thereupon collected practically his whole staff, comprising two second officers, the head moharrir, the constable moharrir and nine constables, 14 persons in all, and proceeded towards Bhagwanpur, which is at a distance of about four miles from Nawabganj. He left the police station in charge of an illiterate constable and he

looked the office in which the general diary was kept and took the key with him. The party went by way of Jagapur to Giryawan, which is said to be at a distance of about two furlongs from Bhagwanpur. They went to the house of Baboo Miyan, the mukhia of the village, and from there the station officer sent for Sheoraj, the chaukidar of Mahrab. Satyanand Sinha, the mukhia of Bhagwanpur, and Bindesri Prasad, the mukhia of Eatra Ghauspur; and he also collected a number of residents of Giryawan and some Pasis of Katra Ghauspur, including a man named Kalloo, to whom reference will be made later on. When all these persons were mustered, the party was about 30 strong and they proceeded towards Bhagwanpur. On the outskirts of the village they hid in a bullock-run and soon afterwards a man came from Bhagwanpur and informed the station officer that the burglars had effected an entrance into the house of Bhagwan Din. The party thereupon proceeded to wards that house. The station officer divided his force into two parties, one of which went, to the door of the house, while the other went to the back of this house and the adjoining houses. Being disturbed by sounds, the burglars opened the door of the house and emerged. Four of them, Bansi, Hariwa, Sajwa and Sheoraj, were arrested, while two or three managed to run away. Bansi put up a fight before his arrest and received a number of injuries. The thieves who ran away were pursued by four or five members of the police party including Kalloo, and two of them were arrested after they had run a distance of two or three bighas. These were Saikua and Jagan. They too put up a fight before their arrest with the result that they received some injuries, and a number of injuries were also inflicted on Sheoraj, tohaukidar, who was one of the pursuers. One or two men made good their escape altogether. One of the two men who were captured - probably Saikua - had a 'steel box' and this was brought back along with Saikua and Jagan to the house of Bhagwan Din. Meanwhile Bhagwan Din, the owner of the house, who had been asleep in his courtyard, had been aroused by the noise of the fight and had emerged and watched the encounter between the police party and the four burglars who were arrested outside the house. When he saw the box, he identified it as his. The key was not with him, as it had been taken by his wife, who had gone to a fair, and so a blacksmith was called and the lock was broken open and the box was found to contain the ornaments of Bhagwan Din intact. The station officer had meanwhile sent Bhagwan Din back into his house to see

whether anything else had been taken and the latter came out and said that no other property was missing, but that there was a hole in the wall of the house. Then the station officer and the mukhias and some others went inside the house and saw this hole and on the outside of it they found a sabri, which is a house-breaking implement or jemmy.

2. Of the arrested persons, Bansi, Saikua and Jagan were sent to the hospital at Anapur for examination of their injuries. Manzoor Ahmad, constable, had also an injury on him and so he and Sheoraj, chaukidar, were also sent for examination. Manzoor Ahmad had a lathi mark on the left side of his back and Sheoraj had two contusions (one being on the head), a bruise, a lathi mark and an abrasion. Saikua had three abrasions and a bruise, and Jagan had three bruises. Bansi had no less than fifteen injuries, several of which were on the head, and he had sustained a fracture of the third metacarpal bone. Meanwhile the station officer had sent the head moharrir back to the police station at about 5.30 A.M., and he himself and the other members of the police party reached the police station at 8 A.M. A report had been written by Bhagwan Din at Giryawan and the station officer himself also made a report on his arrival at the police station.

3. The accused all pleaded not guilty, and they say that the whole case is a fabrication from beginning to end. It is alleged by them that on the previous evening Saikua and Bansi went to collect fuel from a grove belonging to Satyanand Sinha as firewood was required for a marriage at the house of Saikua. Sheoraj, the chaukidar of Mharab and Bhagwanpur, who is a gadaria by caste and who was grazing his goats in the vicinity, objected to Bansi and Saikua collecting fuel and tried to stop them; but they took no notice of him. Thereupon, Sheoraj shouted to Kalloo, who is a servant of Satyanand Sinha, and on his arrival he and Sheoraj proceeded to assault Bansi and Saikua. All four persons received injuries and Bansi fell to the ground unconscious. Sheoraj and Kalloo then went and called Satyanand Sinha, who came and saw Bansi and had him removed to his house and also took Saikua there. Then Satyanand Sinha went with his two minions, Sheoraj and Kalloo, to the police station and had a consultation with the station officer. The station officer came to the scene and the other four accused, Jagan, Hariwa, Sajwa and Sheoraj, were sent for and were put under arrest. Jagan says

that he was beaten after his arrest. It is said that since Sheoraj chaukidar is a relative of Bhagwan Din, the latter was induced to lend his box of ornaments in order to create evidence and on the assurance that it would be returned to him. Certain witnesses were examined on behalf of the accused, but it is not necessary to discuss their evidence. (His Lordship then discussed the evidence and proceeded.) On behalf of the Crown it is contended that the apparent improbabilities in the case are the result of stupidity or excess of caution or both on the part of the station officer. If so, it is unfortunate; but so far as we are concerned, the whole story is suspect from start to finish, and we have no hesitation in agreeing with the view which is taken by the learned Judge of the Court below. In particular, we find it very difficult to appreciate the station officer's conduct in taking practically the whole force at his disposal, in leaving behind an illiterate constable and in locking up the office, which contained the diary. The next matter which we have to consider is what are the powers of this Court under Section 307, Criminal P.C. In *Emperor v. Shera* : AIR1928 All207 it was held by a Full Bench that the powers of this Court are not limited by the provisions of Sub-section (2) of Section 423 of the Code. Now, it is obvious that Section 307(3) gives wide powers to the High Court. It provides that:

In dealing with the case BO submitted the High Court may exercise any of the powers which it may exercise on an appeal, and subject thereto It shall, after considering the entire evidence and after giving due weight to the opinions of the Sessions Judge and the jury, acquit or convict the accused of any offence of which the jury could have convicted him upon the charge framed and placed before it; and, if it convicts him, may pass such sentence as might have been passed by the Court of Session.

4. In cases where there has been a verdict of not guilty however, it is the practice of this Court and also of other High Courts not to reverse the verdict of a jury unless it is perverse or manifestly wrong. On the other hand, where the jury has returned a verdict; of guilty, we think that the matter stands on a different footing. It is true that the jury are judges of fact; it is open to them to believe or to disbelieve a witness, and in the present case they have chosen to believe the witnesses for the prosecution. We realize that the verdict of a jury, especially when it is

unanimous, should not be lightly displaced, and it cannot be said that the evidence in the case before us is of such a character that a verdict of guilty based upon it is demonstrably wrong. But, having regard to the language of Section 307 and having regard to the duty which is enjoined upon us and the powers which are conferred upon us thereunder, we cannot accept the view that, so long as the verdict is not perverse or palpably erroneous, the High Court must act against its own judgment and in the teeth, as it were, of its own appreciation of the evidence must convict a person in respect to whose guilt it entertains grave doubts. It is unreasonable to suppose that after being enjoined with the duty of 'considering the entire evidence and giving due weight to the opinions of the Sessions Judge and the jury,' this Court should be thus fettered to the prejudice of the accused. In our opinion it is the clear duty of this Court in the interests of justice to reverse the verdict of a jury when it considers that the prosecution has failed to establish the charge and that the verdict of the jury is not sustainable upon the evidence. In the result we accept this reference and acquit the six accused of the offence with which they were charged. They will be forthwith set at liberty unless they are required for any other matter.