Dulli and ors. Vs. Emperor

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Court : Allahabad

Decided On : Aug-06-1924

Reported in : AIR1925All305; 85Ind.Cas.714

Appellant : Dulli and ors.

Respondent : Emperor

Judgement :

Sulaiman, J.

1. This is an appeal filed by four appellants. The first three have been convicted under Section 397 of the Indian Penal Code and sentenced to seven years' rigorous imprisonment each, and the fourth under Sections 397 and 75 of the Indian Penal Code and sentenced to eight years' rigorous imprisonment. It has also been ordered that the sentences of the first two appellants should run concurrently with previous sentences passed on them in other dacoity cases.

2. Quite irrespective of the question of fact involved, the order on the face of it is defective in several particulars. In the first place, Section 897 of the Indian Penal Code does not contain any 'substantive offence, but merely prescribes the minimum punishment which can be passed if robbery or dacoity is attended with certain circumstances mentioned therein. It follows that a conviction merely under Section 397 has no meaning. The conviction in the case of a dacoity should be under Section 395 read with Section 397 of the Indian Penal Code.

3. The second defect in the judgment is that it nowhere shows that the appellants either used any deadly weapon or caused grievous hurt to any person, or attempted to cause death or grievous hurt to any person at the time when the alleged dacoity was committed. What the judgment merely shows is that some of the dacoits had a pistol, a sword and big knives and that a pistol was actually fired. It does not however show that either of the appellants himself used any such deadly weapon. In order to satisfy myself whether the evidence establishes this fact or not, I have read the entire prosecution evidence and I find that there is no satisfactory evidence that either of these appellants did any of the three acts mentioned in Section 397. Their convictions under Section 395 read with the Section 397 cannot be justified.

4. Before Section 397 of the Indian Penal Coda can be made applicable it is necessary that each of the accused is proved to have been the offender doing the acts mentioned therein. When Section 397 does not refer to any substantive offence Section 34 of the Indian Penal Code would be inapplicable. For purposes of Section 397 all the persons participating in the dacoity would not be held responsible for the acts of the others. It is true that in the case of Queen Empress v, Mahabir Tewari (1899) 21 All. 263 Sir Arthur Strachey, C.J., did hold that 'Any person taking part in the dacoity though he may not himself have struck the blow causing the grievous hurt, is nevertheless liable for the act by reason of Section 34 of the Code.' But this case was dissented from by Knox, A.C.J., and Banerji, J., in the case of Queen Empress v. Senta (1899) 26 All. 404(N.), where it was laid down that B. 397 applies only to those persons taking part in a dacoity who themselves use deadly weapons or themselves cause grievous hurt or attempt to cause death or grievous hurt, and that it does not apply to such persons taking part, in a dacoity who may be liable for substantive offences committed by some of the parties only in virtue of Section 34 of the Code. The same view was followed by Aikman, J., in the case of King Emperor v. Nageshwar (1906) 28 All. 404.

5. On the facts of this case therefore it is impossible to uphold the convictions under Section 397 even if read with Section 395 of the Indian Penal Code.

6. Another mistake committed by the learned Additional Sessions Judge is in his ordering that the sentences of the first two accused should run concurrently with previous sentences passed on them in other dacoities. Under Section 35(1) Criminal Procedure Code a Criminal Court has power to direct that punishment should run concurrently, but this is only when the accused is convicted at one trial of two or more distinct offences. The court has no power to order sentences to run concurrently with the sentences passed in other trials. This was the view expressed by Tudball, J., in the case of Maqbal Husain v. King Emperor (1913) 11 A.L.J. 263 and in that view I fully concur.

7. Coming to the merits of the appeal I am fully satisfied that the charge of dacoity has been brought home to all the four appellants. Latif admitted his guilt and pointed out some 18 utensils buried in a heap which are proved to be part of the stolen properties. The other three appellants have been identified by a number of witnesses and there is absolutely no reason to doubt the genuineness of the identification proceedings. Dulli jumped from the roof of his house and attempted to run away as soon as he saw the Sub-Inspector but was caught in the market. Zafar and Latif live in a joint house and a stolen article was recovered from that house. Another stolen property was recovered from the house of Aijaz.

8. As I am agreeing with the learned Additional Sessions Judge on the question of the complexity of the appellants in this dacoity it is not necessary for me to discuss the evidence in greater detail. The evidence discloses that it was a daring dacoity. The dacoits were about 12 or 13 in number. They seized and beat Durga. They were also armed with deadly weapons - swords and big knives besides lathis - and a pistol was actually fired in order to frighten the inmates. The dacoits made light by burning straw and by lighting a small lamp and the loot lasted for about an hour and a half. They decamped with properties like utensils, clothes or cash and also ornaments taken off from the persons of females.

9. I am therefore satisfied that both the accused were guilty of the offence of dacoity within the meaning of Section 395 of the Indian Penal Code. Sentences of seven years passed by the Court below are by no mean savere.

10. It is of course open to me to take into consideration the sentences passed on Dulli and Aijaz in other trials and impose a lesser sentence in this case instead of ordering that the sentences should run concurrently. I however see absolutely no ground why I should pass a lesser sentence in view of the fact that these two accused have been found guilty of committing other dacoities and have been previously sentenced particularly when those dacoities were quite distinct and independent. I am unable to discover any ground for leniency. When persons commit different dacoities in different villages they are liable to be punished for all those dacoities separately. Latif had a previous conviction of one year under Section 457 of the Indian Penal Code.

11. I accordingly find Dulli, Aijaz Ahmad and Zafar guilty of the offence of dacoity under Section 395 of the Indian Penal Code and convict them of that offence and sentence them to seven years rigorous imprisonment each. 1 find Latif guilty under Section 395 read with Section 75 of the Indian Penal Code and sentence him to eight years rigorous imprisonment. Their convictions under Section 397 are set aside. The order directing that the sentences passed on Dulli and Aijaz should run concurrently with the previous sentences passed on them is also set aside. In other respects their appeals are dismissed.