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Court : Allahabad

Decided On : Sep-18-1968

Reported in : 1970CriLJ386

Judge : T.P. Mukerjee, J.

Appellant : Ghamandi and ors.

Respondent : State

Judgement :

T.P. Mukerjee, J.

1. (1-5) (After statins the facts, His Lordship proceeded.)

2. A point of law has now been raised by the learned Counsel for the defence that out of the six dacoits, two having been acquitted, it was not possible to sustain the conviction of the remaining four on a charge under Section 395, I. P. C. which contemplates participation of at least five persons in the offence. In support of his contention he relied on two decisions. The first is a decision of the High Court of Andhra Pradesh in the case of In re, K. Appalaswami AIR 1957 Andh Pra 954 and the case of Devi v. State . Both these decisions were by single judges of the respective Courts. In the first case seven persons who were, apparently, known to the complainant had been named in the first information report as having cpmmitted a dacoity by forcibly harvesting and removing his crop. The Sessions

Judge found that there was no case against three of the accused persons and he acquitted them for want of proof. He, however, convicted the other four under Section 395, I. P. C. Before the High Court a point was taken on behalf of the appellants that in the circumstances of the case, three of the accused persons having been acquitted the charge of dacoity against the other four under Section 395, I. P. C. could not be sustained. The learned Judge accepted the contention observing as under:

I am impressed with this argument. It is true that in the Sessions Court the prosecution witnesses stated, that apart from these accused there were a number of persons cutting the crops but this is belied by Exhibit P-12 the charge-sheet and by the admission made by the investigating officer. Nor does the Sessions Judge say that there were seven people who were engaged in removing the crop but the identity of persons other than the appellant has not been satisfactorily established.

It would thus be found that in that case the learned Judge was not satisfied that seven persons had participated in the dacoity. In point of fact, the learned Judge ultimately acquitted all the three accused persons who had appealed against their conviction. The observation of Chandra Reddy, J' quoted above, proceeded entirely on the basis that there was no evidence in the case to show that more than three persons were engaged in the alleged dacoity. It was on this basis that it was held that conviction of the three appellants under Section 395. I, P. C. was not tenable.

7. In the other case which came from the Rajasthan High Court, there were five accused persons who were put on trial, but two of them were acquitted on the ground that only three had taken part in committing the offence. It was, therefore, held that those three persons could not be convicted under Section 395, I. P. C. for the offence of decoity. In this case also the Court held that even as regards the three appellants who had been convicted by the Sessions Judge, no offence was proved beyond a reasonable shadow of doubt. The result was that all the appellants were acquitted. In the course of his judgment the learned Judge observed as follows:

The learned Sessions Judge has made an obvious error in convicting the three accused under Section 395 of the Penal Code. It was alleged that there were only five accused who committed the offence. Out of five, two were acquitted by the Sessions Judge himself. According to his finding only three accused took part in the offence, and therefore, the offence could not, in any case be one under Section 395 of the Indian Penal Code.

In view of what has been stated above it would appear that the observation of the learned Judge in point was in the nature of an obiter. In any case, the observation has to be read in the context of the facts of that case which are very different from the facts of the present case.

8. As I have already noticed, in the present case all the prosecution witnesses have clearly stated that there were six miscreants who were engaged in the commission of the dacoity and, as a matter of fact, two of them namely Ghamandi and Hetram were actually arrested by the villagers after a hot chase, The arrested dacoits were beaten up by the villagers and they gave out the names of the other four dacoits as Ramphal, Zalim alias Jagrua, Sarman and Gudru. Of these four dacoits, two of them have been acquitted by the learned sessions Judge on the ground that the evidence of identification as against those two accused could not be safely relied upon. It is possible that the two appellants viz., Ghamandi and Hetram who had been apprehended on the spot, had given out two wrong names purposely. The fact that two of the accused persons viz., Sarman and Gudru, were acquitted on the ground that the evidence of identification against them was not satisfactory, does not necessarily mean that the offence in the present case was committed by only four persons.

The learned Counsel for the State has produced before me certain authorities to support this view. The earliest case in point appears to be the decision of the Calcutta High Court in the case of Rashidazaman v. Emperor 12 Cri LJ 193 (Cal). In that case eight persons were charged with dacoity, but four of them were acquitted. It was contended on behalf of the defence that in consequence of the acquittal, the charge of dacoity under Section 395, I. P. C. could not be sustained against the remaining four. The learned Judges negatived the contention and

upheld the conviction of the four appellants on the charge of dacoity. The decision of the Calcutta High Court in this case was cited with approval by the Nagpur High Court in the case of Narayan Dinba v. Emperor AIR 1947 Nag 57 in which it was laid down that the mere fact that the evidence was not sufficient to convict four of the accused persons actually charged could not in any way affect the question of the number of persons engaged.

In a case before the Orissa High Court, Suka Misra v. State : AIR1951 Ori71 a similar question arose. Twelve persons were put on trial, to answer a charge of dacoitv. Nine of them were, ultimately, acquitted and three convicted under Section 395, I. P. C. The case was heard by a Division Bench of the High Court constituted of Jagannadhadas and Panigrahi. JJ. Panigrahi, J., who delivered the leading judgment had no hesitation in holding that the conviction of the three of the appellants on the charge of dacoity was quite correct, Jagannadhadas, J., however, came to the same conclusion with some amount of apparent hesitation, Ultimately, he agreed with Panigarhi, J. The correct position is that, in spite of the acquittal of a number of persons, if it is found as a fact that along with the persons convicted there were other unidentified persons who participated in the offence, bringing the total number of participants to five or more, the conviction of the identified persons, though less than five, is perfectly correct. In the present case, as I have pointed out above, there is the consistent testimony of the prosecution witnesses that there were six dacoits including the four appellants. This is also specifically the case stated in the first information report. If, therefore, two of the dacoits could not be traced and identified, there is no reason why the remaining four cannot be convicted of the offence of dacoity under Section 395, I. P. C.

9. Lastly the learned Counsel for the appellants pleaded that the sentences imposed on the appellants were too severe and should be appreciably reduced. I am unable to accept the contention. The sentences imposed by the learned Sessions Judge were perfectly justified in view of the seriousness of the crime.

10. The appeal is dismissed. Appellants Nos. 1 and 2 are in gaol. They will serve out the sentences imposed upon them. Appellants Nos. 3 and 4 are on bail. Their bail bonds are cancelled. They must immediately surrender and serve out the

sentences imposed on them.

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