

**Tahir Vs. State**

**Tahir Vs. State**

**SooperKanoon Citation :** [sooperkanoon.com/467407](http://sooperkanoon.com/467407)

**Court :** Allahabad

**Decided On :** Dec-05-1967

**Reported in :** 1969CriLJ682

**Judge :** S.D. Singh, J.

**Appellant :** Tahir

**Respondent :** State

**Judgement :**

**S.D. Singh, J.**

1. This and the connected Appeal No. 912 of 1965 arise out of a dacoity which was committed at 1.30 A. M. on 5th August, 1964, at the house of one Balram in village Khilwara. Report about the occurrence (Ex. Ka-1) was made at police station Jansath by 5 A.M. by Balram, Five persons were prosecuted for having committed this dacoity, but two out of them, namely Chhota and Tufail, were acquitted by the Sessions Judge. The three appellants Tahir, Khalil and Saghir were identified by several witnesses and were consequently Convicted and sentenced to seven years rigor-Bus imprisonment under Section 395 of the Indian Penal Code.

2. Tahir's case was that after his arrest, he was taken to police station Bhopa and shown to the witnesses there, that he was then brought to police station Jansath

and even shown to the witnesses there and thereafter sent to the District Jail. Curiously enough, the prosecution did not examine the two constables, Sumatvir Singh and Ram Kishan, who arrested him on 29th August, 1964. According to the prosecution evidence he was arrested under Section 25 of the Arms Act and brought to police station Jansath at 6.15 A.M. and it was then that he was put under cover and asked to remain covered. Even according to the prosecution case, therefore, he came upto police station Jansath with his face open, There, is no evidence as to when and where he was arrested and if, therefore, it is contended by Tahir that he was first taken to police station Bhopa and shown to the witnesses there, that statement goes practically unrebutted.

3. The prosecution contention was that Tahir was arrested under Section 25 of the Arms Act and, therefore, it was not necessary to cover him immediately after his arrest. But even though Tahir was arrested under the Arms Act, if he was suspected of having taken part in a dacoity, all those precautions should have been taken which are normally taken in the case of the arrest of a suspect in a dacoity case. Head Constable, Harpal Singh has deposed that as soon as Tahir came to the police station he was covered. This means that the Jansath police knew at the time Tahir arrived at the police station that he was wanted in this dacoity case; and if Head Constable Harpal Singh knew this fact, the appellant is entitled to urge that even the two constables who arrested him must have known that fact. In any case, when Tahir was ultimately prosecuted for having committed the dacoity, Sumatvir Singh and Ram Kishan or at least one of them should have been examined so as to show when he was arrested, where he was kept after his arrest and if there was any chance of Tahir being shown to the witnesses either at Bhopa or on his way to Jansath. Information on this point has been purposely kept back by the prosecution and true facts have thus been suppressed.

4. In connection with Tahir's contention that he was shown to the witnesses at Bhopa, I wanted to see whether he made this allegation when he was first examined by the Committing Magistrate, but his statement before the Committing Magistrate was nowhere to be found. It appears that he was not examined by Sri F.S. Fanthome, Additional District Magistrate (Judicial). The report of the Sessions Court does not disclose if any such evidence was tendered in evidence by the

prosecution counsel. Nor has the Sessions Judge mentioned anywhere that any exhibit marks were put on the statements of the accused recorded before the Committing Magistrate. Even the statements of the accused which were recorded in the Sessions Court, make no mention of their previous statements having been put to them. It is clear, therefore, that the Magistrate did not examine the accused at all. By failing to examine the accused, the Magistrate has harmed the prosecution more than the accused. The only thing that the accused might say in respect of this omission is that he was not given any opportunity to explain his case before the Magistrate; and since no proceedings in Court can be so interpreted as to prejudice the case of an accused, Tahir is entitled to urge that he would have stated before the Committing Magistrate, if he were examined there, what he did actually say when he was examined before the Sessions Judge. But the harm done to the prosecution case, which cannot now be remedied, is that if the accused were examined by the Committing Magistrate, the prosecution would have known what the case of the accused was, and it might have tried to meet that case of the accused when evidence was being led in the Sessions Court.

5. It is certainly true that under Sub-section (6) of Section 207A of the Code of Criminal Procedure, the Magistrate may examine an accused person only if necessary, but in practice accused persons are invariably examined by the Committing Magistrates, and it is really surprising that Sri Fanthome did not consider it necessary to question the accused before him and find out from them what their reply to the evidence which was examined before him was. Though Sub-section (6) of Section 207A does not make it mandatory on the part of the Committing Magistrate to examine the accused, and it even mentions that the accused are to be examined only if necessary, I can imagine of no circumstance under which the Magistrate may not find it necessary to examine an accused.

6. All the same, the contention of Tahir appellant is that he was shown to the witnesses at Bhopa and the prosecution has not produced any evidence in the case as to his arrest and the manner in which he was kept upto the time he was brought to police station Jansath. The appellant is entitled to the benefit of doubt which is thus created in the case against him.

7. The case against Saghir is to some extent similar to that of Tahir. He too was not covered when he was arrested, but in other respects it is materially different. Saghir was arrested not by Jansath, but by Bhopa police on 19th August, 1964, under Section 25 of the Arms Act. Jansath police had no information about his arrest. Saghir was sent to the District Jail from Bhopa direct and it was later on that he was required to be put up for identification by the Jansath police for the commission of this dacoity. Even so, Saghir was sent to the District Jail at Muzaffarnagar from Bhopa police station under cover on the very day he arrived there, i.e. on 19th August, 1964. It is difficult to believe, therefore, that Jansath police would be able to have this-appellant seen by the witnesses at Bhopa police station. There is no evidence on his behalf beyond his own statement that he was shown to the witnesses and the witnesses have, of course, deposed that they had not seen the accused. The exceptional circumstances which were found in the case? of Tahir are not available in his case.

8. The Sessions Judge has noted that Saghir has leucoderma marks on his face and that that fact was not taken notice of by the Magistrate who conducted the identification proceedings. No question was, however, put to the Magistrate whether this particular mark was also covered, and since the Magistrate has deposed that, he had taken all necessary precautions in respect of his identification marks, it can be presumed that even the Leucoderma marks on his lips were covered. Saghir was identified by four witnesses, Balram (P.W. 1), Risal (P.W. 3), Makhan (P.W. 8) and Girwar (P.W. 9). His identification by these four witnesses was quite good and there is no reason to doubt the correctness of this evidence against him.

9. Khalil appellant was identified by three witnesses, Balram (P.W. 1), Samai Singh (P.W. 2) and Makhan (P.W. 8), but Samai Singh committed one mistake with one correct identification and identification by him is, therefore, doubtful but even so there are two identifications against the appellant and this identification is sufficient for conviction. The Sessions Judge has pointed out that he had a boil mark on the upper lid of his left eye, but it is also pointed out that this was not visible when the eyes were open. There is no reason, therefore, to suppose that the appellant Khalil was identified on any such account. Khalil appellant alleged

that he has been prosecuted by S.I. OmPrakash Tyagi as he had prosecuted him earlier in another dacoity from which he was acquitted. This is, however, only an allegation, the truth of which has to be judged in the light of the evidence examined against the appellant. This evidence is sufficient to establish his guilt.

10. There is thus no force in the appeal filed by Khalil and Saghir.

11. This appeal is allowed. Tahir is acquitted of the charge under Section 395 of the Indian Penal Code and his conviction under that provision and the sentence of seven years rigorous imprisonment awarded to him thereunder are set aside. He will be set at liberty at once unless wanted in any other case. The connected Appeal No. 912 of 1965 is dismissed. The conviction of Khalil and Saghir under Section 395 of the Indian Penal Code and the sentences of seven years rigorous imprisonment awarded to each of them are confirmed.

**SooperKanoon - India's Premier Online Legal Search - [sooperkanoon.com](http://sooperkanoon.com)**