Chutta Vs. Emperor

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Court : Allahabad

Decided On : Nov-27-1915

Reported in : 32Ind.Cas.145

Judge : Piggott, J.

Appellant : Chutta

Respondent : Emperor

Judgement :

Piggott, J.

1. This is an appeal by one Chutta who has been convicted on a charge framed under Section 397, Indian Penal Code, and on a further charge under Section 75 of the same Code. The appeal raises in the first instance a question of procedure. It is contended that the trial as held was invalid, because it took place before a Court which was not properly constituted in accordance with law. It was required by law that the trial should be held before the Sessions Judge and at least two assessors, the latter to be chosen as the Judge might deem fit from persons summoned to act as such. In this case the trial took place before the first Additional Sessions Judge of Aligarh sitting with two assessor. As regards one of those there is no doubt that he was properly summoned and properly chosen in accordance with law. The question raised is as to the other assessor, Mr. Hafiz Muhammad Ghulam Hyder. I find that this gentleman's name was at the time of

the trial duly entered in the list of assessors for the Bulandshahr District. He was summoned to attend and to serve as an assessor for the criminal sessions to commence on June 14th, 1915. I am satisfied that there was no irregularity whatever in connection with the summoning of that gentleman for the above date. On June 14th, 1915, he failed to appear but he presented himself in Court on June 17th, 1915. On that date the trial of the appellant Chutta was about to commence. Summons had been issued requiring the attendance of four assessors on that particular date, but two of those gentlemen failed to appear, and a third presented himself only to ask the learned Sessions Judge to excuse him from attendance. Owing, however, to the appearance of Mr. Hafiz Muhammad Ghulam Hyder on that day, the Sessions Judge actually had before him five assessors, who had been summoned to act as such. He considered himself justified in choosing two of these to act as assessors, that is to say, Mr. Muhammad Ghulam Hyder and one out of the four assessors who had been duly summoned for June 17th. The question which I have to determine is whether Mr. Hafiz Muhammad Ghulam Hyder had been 'summoned to act' as an assessor within the meaning of that expression under Section 284, Criminal Procedure Code. The circumstances of the present case are clearly distinguishable from the case of Man Singh v. Emperor 21 Ind. Cas. 894; 11 A.L.J. 930; 14 Cr. L.J. 654; 35 A. 570, to which I have been referred on the part of the appellant. The suggestion put forward in argument is that Mr. Hafiz Muhammad Ghulam Hyder had not been summoned to act as assessor for the 17th June 1915. It is contended, therefore, on the principle laid down in the ruling referred to, that it should be held that the assessor in question had not been summoned to act in accordance with law. The object and purpose of the provisions of the Code of Criminal Procedure with regard to the summoning and selection of assessors seems clear enough. There must be no reason for suspicion that any one of the assessors sitting on a particular trial has been, if I may be allowed to use the expression, 'planted' on the Court by any person interested in the success or in the failure of the prosecution. Judged by this test, the circumstances of the present case offer no ground for adverse comment. The presence of Mr. Hafiz Muhammad Ghulam Hyder in Court on June 17th, 1915, was purely fortuitous, and no one could possibly suspect that his attendance in, Court, that day had anything to do with the fact that the appellant Chutta was

about to be tried on a charge of dacoity. Nevertheless, I am quite prepared to concede to the appellant that the provisions of the law on this point require to be strictly observed. The real question is whether in the present case there has been such compliance with; the provisions of sections. 326 and 327, Criminal Procedure Code, as is requisite for the validity of the trial. The wording of these sections lends no colour whatever to the Suggestion that an assessor cannot be held to have been lawfully summoned, to act as such on a particular day, unless the summons issued to him was for his attendance on that day and no other. On the contrary, it seems to me that what the Legislature contemplated as the ordinary or normal procedure is that all assessors should be summoned for the first day on which a criminal sessions commences, however many trials (I note specially the use of this word in the plural number in Section 326, Criminal Procedure Code) it may be proposed to hold in the course of that sessions. I am quite aware that this procedure has been found unnecessarily burdensome for the persons summoned to act as assessors in view of the length to which criminal sessions are apt to run in many districts of these provinces. The section which I am considering provides for the modification of what I may call the normal procedure in order to meet such difficulties as the above. The practice commonly followed, therefore, is to summon four or more assessors for each date, in the course of a criminal sessions, on which the Sessions Judge thinks it likely that he will commence a fresh trial. There is no objection in law to this procedure; but, in my opinion, it is so far from being obligatory that it is not even the normal procedure contemplated by the law. In the present case I find that the criminal sessions of the Additional Sessions Judge of Aligarh held at Bulandshahr commenced on the 7th June 1915, continued without interruption up to the 12th of June 1915, and then after an adjournment over a Sunday continued further without interruption to the close of June 18th, 1915. Such assessors as were summoned for June 14th, 1915, were summoned in order that they might give their assistance in connection with any trial which might be held on that date or on succeeding dates up to the close of the sessions. The learned Sessions Judge would have been perfectly in order if he had caused to be summoned for June 14th, 1915, the requisite number of assessors for the trials which remained for disposal on his list according to the programme which he had prepared for his June sessions; Suppose, moreover, that the learned Sessions

Judge had made a miscalculation and that the trial commenced by him on the 11th of June 1915 had not come to an end until the close of the 14th of June 1915, it would scarcely be' suggested that any error or irregularity had been committed if the Sessions Judge had commenced a new trial on the 15th June 1915 by the selection of the requisite number of assessors from amongst the persons duly summoned to act as such on June 14th, 1915. The present case is, in my opinion, covered by the above considerations and objection to the constitution of the Court by which the appellant Chutta was tried, therefore, fails.

2. It remains for me to consider the appeal on the merits. The fact that a dacoity was committed in the house of Dal Chand, bania, at the time specified in the charge is proved by overwhelming evidence and is not contested in appeal. The question is whether the complicity of the appellant Chutta in the commission of this offence is satisfactorily proved by the evidence. He is implicated directly in the evidence given by the approver Debi Singh and indirectly in the statement of another accomplice witness Ganga. Besides this two of the eye-witnesses to the dacoity depose that they recognised Chutta amongst the dacoits and were able to identify him at the jail subsequently to his arrest. The evidence satisfied both the assessors as well as the Sessions Judge. I can find no ground for discrediting it. It is further contended that the conviction has been wrongly recorded under Section 397 of the Indian. Penal Code and that the sentence is too severe. There is no doubt that the appellant was armed with a pistol. The dacoity in the present case was a serious one and grievous hurt was caused to Chhidda. Moreover the appellant is an old convict. Under the circumstances, the sentence of ten years' transportation passed in the case appears to be justified. I dismiss the appeal.