

Neksu Vs. State

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Court : Allahabad

Decided On : Apr-12-1977

Reported in : 1977CriLJ1327

Judge : H.N. Kapoor, J.

Appellant : Neksu

Respondent : State

Judgement :

H.N. Kapoor, J.

1. This is an appeal by Neksu against the order and judgment dated 9-5-1973 of the I Civil and Sessions Judge, I. P. C, and sentencing him to seven years' R. I. The appellant was prosecuted along with Vijan Singh and Mahendra Singh but those persons were acquitted.

2. The prosecution story as revealed in the first information report by the prosecution evidence briefly stated is as follows, A dacoity was committed at the house of Pati-ram (P. W. 2) in village Nagla Machhi at about midnight on the night between 13th and 14th of September, 1971. Patiram and his son Anup Singh (P. W. 6) were sleeping outside the house while his another son Sahib Singh was sleeping inside the house with Smt. Kalawati wife of Patiram, his daughter Chandrakali and his mother Smt. Rukmini Devi. Ten or twelve dacoits arrived

there. Three of them had guns while five had country-made pistols and the rest had lathis. Two of the dacoits caught hold of Anup Singh and Patiram while the rest struck lathis against the door which was opened by Smt. Kalawati. They then threatened and took her pongani valuing about Rs. 100/- and her silver hasli valuing about Rs. 75/-. In the meantime, Sahib Singh came out in the courtyard with the Lathi. Chandrakali also arrived there raising alarm. One of the miscreants then fired which struck Chandrakali. Many villagers then arrived there on hearing alarm including Shobharam (P. W. 4), Horilal (P. W. 5) and Chiranji (P. W. 10). The dacoits then came out of the house. One of the dacoits Neksu the appellant was apprehended by Anup Singh son of Patiram with the help of the villagers. He gave out his name as Neksu. The looted hasli and pongani were recovered from his possession. Badmashes fired guns while going out. During the commission of dacoity, Patiram and Sahib Singh had received lathi injuries. It was also stated in the first information report that they could recognise one Bijan son of Chandu Singh. They could identify the remaining accused if they were produced before them. Patiram went to the police station in the morning along with Neksu appellant and the hasli in a bullock cart. He lodged the F. I. R. at the police station Kotwali on 14-9-1971 at 9.45 a. m. A case was registered Under Sections 395/397, I. P. C. against Neksu and others. Neksu was handed over to the police. The hasli was also deposited by the police. S. I. Motiram Sharma (P. W. 11) made investigation of the case. He went to the place of occurrence and prepared the site plan (Ext. K-10). He interrogated the witnesses. After completing the investigation, he submitted the charge-sheet (Ext. ka-12) on 1-12-1971 against the appellant and Vijan Singh. The charge sheet against the other accused person Mahendra Singh was submitted on 22-2-1972.

3. The appellant was duly tried. He denied the prosecution allegations and stated that he was going to Etah from his village Katra. He was arrested by the police between 10 or 11 a. m, when he was sitting at the crossing. He stated that his brother in-law Ram Laraite (D. W. 1) was with him. In support of the defence this witness Ram Laraite stated that the police had arrested the appellant at about 9 or 10 a. m. when they were sitting at the Baghwala Chauraha waiting for a bus. The trial court did not believe the defence version and convicted and sentenced the appellant as stated above, Feeling aggrieved, the appellant has filed this appeal.

4. In support of its case the prosecution has examined Patiram (P. W. 2), Shobharam (P. W. 4), Horilal (P. W. 5), Anup Singh (P. W. 6), and Chiranji (P. W. 10) as eye witnesses of the occurrence. The injuries of Patiram, Sahib Singh and Chandrakali have been fully proved by the evidence of Dr. C. K. Sharma (P. W. 14). Patiram and Sahib Singh had received lathi injuries while Km. Chandrakali had received pellet injuries. There can be no doubt that a dacoity was committed at the house of Patiram on the date and time stated by the prosecution. All the five witnesses of fact have corroborated each other on the point of dacoity as well as on the point of arrest of Neksu and recovery of the looted Hansli and pongani from his possession. No enmity whatsoever has been suggested or proved against any of these witnesses. The only suggestion was that the police had arrested him in the morning between 10 and 11 a. m. D. W. 1 Ram Laraite, no doubt, tried to bring the time of arrest as between 9 and 10 A. M. The F. I. R. was lodged at 9.45 a. m. There was no reason for the witnesses to have falsely named the appellant at the instance of the police. The appellant or his witness had not given any reasons why the police was after him.

5. Learned Counsel for the appellant has argued that it is possible that the police might have apprehended the appellant on the basis of suspicion when he was going outside. It is not the defence case that the appellant was arrested on the basis of suspicion soon after the occurrence. The defence case is altogether different that he was arrested in the morning by the police. The witnesses have made a definite statement that the appellant was arrested when he was going out of the house. He was arrested with the looted hansli. The witnesses were certainly not interested in planting the hansli falsely. Horilal (P. W. 5) has made slightly inconsistent statement as he stated that the appellant was taken by the police from the village when the police arrived in a jeep but then he stated that the appellant had been taken in a bullock cart. It is clearly mentioned in the first information report that the appellant had been brought to the police station. It is also mentioned in the F. I. R. that the looted hansli too had been brought. Horilal also made a statement that the hansli was handed over to the police when the police officer had arrived in the village. This statement was also made under some confusion. It appears that he does not have a good memory and was making confused statements. The entire prosecution case cannot be thrown out on the

basis of such a statement of Horilal (P. W. 5).

6. After considering the entire evidence on record, I am satisfied that the prosecution has succeeded in proving its case against the appellant beyond all reasonable doubts. The sentence too cannot be considered to be severe.

7. In the result the appeal is dismissed. The conviction and sentence of the appellant Neksu are confirmed. The appellant is in jail. He will serve out the sentence awarded to him.

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