Rahmat Vs. the State

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Court : Allahabad

Decided On : May-25-1979

Reported in : 1980CriLJ581

Judge : Mahavir Singh, J.

Appellant : Rahmat

Respondent : The State

Judgement :
ORDER

Mahavir Singh, J.

1. This is a revision by the applicant Rahmat against the dismissal of his appeal against his conviction under Section 395, I. P. C. and sentence of four and half years' R. I.

2. The prosecution case was that a dacoity was committed in the night of 12/13th July, 1974 at the houses of Ram Deo (P. W. 1) Gokul (P. W. 2) Shobhan and Ghasitey in village Chamarpurwa, hamlet of village Malhi P.S. Malhipur, District Behraich, Households and ornaments worth Rs. 4,180 were said to have been looted away in the said dacoity. The dacoits were said to be 12-13 in number of them three namely, the applicant and two others, namely Avadhey and Chhotey were identified and they were named in the F. I. R. About the rest it was alleged

that their faces were seen in the light of torches and the burning light of khar and an opportunity was given to them to identify them.

3. The applicant had denied the charge. He alleged that as the Station Officer, Mallhipur was against him he got him implicated in this case. It was alleged that he wanted him as a witness in some other case which he refused. He further alleged that all the four victims of the dacoity belonged to one group and had ill-will against him.

4. The learned Assistant Sessions Judge believed the prosecution and rejected the defence.

5. The learned Appellate Court also upheld the finding.

6. In revision it was again contended that in the view of the trial Court the evidence was wrong and that there were enough circumstances to show that he had not taken part in the dacoity. He alleged that the prosecution case was improbable.

7. This contention of the applicant is not acceptable. In revision finding of fact recorded by the Courts below specially when they are concurrent is not to be interfered with except when there is some violation of the procedure or admission of inadmissible evidence or exclusion of material evidence. No such facts have been alleged. It is merely contended that the appreciation of the evidence was not proper but that is beyond the scope of revision,

8. It was next contended that the trial was vitiated. It was said that the charges of four dacoities were tried in one case whereas according to Section 219(1), Cr. P. C. only three offences of the same kind committed within the 'space of twelve months could be tried together.

9. Learned Appellate Court had rejected this objection raised on behalf of the applicant on the ground that the offences were part of the same transaction and so they could be tried together in view of Section 223(a), Cr. P. C.

10. The reasoning given by the Appellate Courts, however, not acceptable. The evidence in the case was that the dacoits committed dacoity at the houses of

different persons one by one. Initially the dacoity was committed at the house of Ram Deo and then at the houses of different persons. The last house was that of Ghasitey. If the dacoits would have committed dacoity simultaneously in all these houses it could be said that it was a part of same transaction but it was not so. It has also been so held in Raj Narain v. State : AIR1953 All448 so it is clear that charge of committing dacoity at the houses of four persons was against the provisions of law and, therefore, it was a case of misjoinder of charges. The question is what is the effect of this misjoinder ?

11. Learned Counsel for the applicant has again referred to Raj Narain v. State (supra) wherein it was held that a trial of more offences than permitted by law would not be a case of more misjoinder but it will be a case of trial against law and so vitiated. That case was, however, decided at a time when the provisions about the effect of misjoinder of charges were not incorporated in the Cr. P. C. These were incorporated in the old Cr. P. C. for the first time on 1-1-56 by the Code of Criminal Procedure (Amendment) Act of 1955 (Act No. 26 of 1955). By that amendment Sub-clause (b) of Section 537 of the old Cr. P. C., was added and it was provided that any error, omission or irregularity in the charge, including any misjoinder of charges would not be a ground for reversing the finding, sentence and order unless there has been a failure of justice. In Sri Ram Varma v. The State AIR 1956, All 456 (FB) it was observed by both the minority and majority Judges that an irregularity in the charge is including misjoinder of charge curable Under Section 537, Cr. P. C. If it had not occasioned a failure of justice, In Sri Ram Varma v. The State (supra) of course the majority view was against the allowing of joint trial to proceed in spite of the fact that both parties were agreeable to it. It was however observed by Court that it was being done as the trial had not yet begun and objection had been raised at the very initial stage. It was pointed out that in such a case the Court could not adopt a wrong procedure in the hope that ultimately it would be condoned under Section 537, Cr. P. C.

12. Here, however, an objection has been raised after the trial as well as appeal was over. So this ruling far from helping the applicant goes against him. This was also the view in Abdul Hamid v. State of Tripura AIR 1959 Tripura. In the present Cr. P. C. such a clause is incorporated in Section 464 the rives situated old Cr P,

C. (sic) that no finding, sentence or order shall be deemed invalid merely on the ground of any error, omission or irregularity in the charge including any misjoinder of charges, unless failure of justice has in fact been occasioned thereby. So before the applicant can succeed he must show that there has been a failure of justice,

13. In Section 465(2), Cr. P. C. it was provided that whether any error, omission or irregularity in any proceeding under this Code, has occasioned a failure of justice, the Court shall have regard to the fact whether the objection, could and should have been raised at an earlier stage in the proceedings.

14. The applicant had not raised any objection about it at the trial stage or even at the appellate stage. Even in the grounds of revision he had not mentioned it as one of the objections. It was only orally at the time of argument for admission that this point was raised, it shows that the applicant had not really suffered any prejudice by this trial.

15. Learned Counsel for the applicant has pointed out that from the evidence it appears that the applicant and other dacoits were identified at the last stage when they were leaving after committing dacoity at the house of Ghasitey and so it could not be said whether they had committed dacoity at th house of other three preceding persons. Assuming that it could be so it does not amount to any prejudice. The applicant had not been separately sentenced under each of the 4 charges. There is only one sentence for the combined charge of 4 dacoities. Even in the case of one dacoity the sentence of 4j years' R. I. cannot be said to be much. So it could not be said that any prejudice has been caused to the applicant.

16. The revision, therefore, fails and is dismissed. The applicant is on bail. He shall be taken into custody to serve out the sentence. The Chief Judicial Magistrate, Behraich will report compliance within 6 weeks.