

Bindeshri and ors. Vs. King-emperor

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Court : Allahabad

Decided On : May-19-1926

Reported in : AIR1927All163

Appellant : Bindeshri and ors.

Respondent : King-emperor

Judgement :

Banerji, J.

1. The three appellants have been convicted of an offence of dacoity and sentenced to five years rigorous imprisonment by the Additional Sessions Judge of Gorakhpur. The facts, which led up to their conviction, are as follows:

In the village Saleem Garh Bazar a Bania of the name Mahender was dacoited on the night of the 22nd of September 1925, and another person, Ram Govind, living near Mahendra, was also robbed on that night. A report was made at the police station at 5 a.m. on the 23rd, and the Sub-Inspector came and found marks of dacoity and injuries on two of the inmates of Mahender's house. Apparently no trace of the dacoity was found by the Sub-Inspector until he received information from the police of the adjoining district, Chupra. The information was really very peculiar in that a man of the name Bhola, who was accused in this case and had been convicted by the Sessions Judge but has not appealed so far, made a report at the police station in the district of Chupra giving a clue to his dacoity. In

consequence thereof the Sub-Inspector of Tariya Sujan went to thana Katia in Chupra, and on the 2nd of October arrested the accused after searching their houses. Nothing, however, was found as a result of the search. Later, on that date, Bindeshri, accused, took the police officer to his house and from the chhappar of his house brought out a coat and a dhoti. A recovery list was prepared which has been verified by Faujdar. This coat and dhoti were kept on the roof of the house covered with some straw. Of the appellants, Ram Dhani and Chaudhur were placed in charge of one constable, and Bindeshri in charge of another constable, for escort from their village to the Gopalganj police station. They were, however, not admitted in the lock-up at Gopalganj until the evening of the 3rd October. Bindeshri, accused, was not admitted into the Kasia lock-up till the 8th October, whereas the other two appellants were admitted into that lockup on the 5th. Investigation followed, and as a result thereof seven persons were put on their trial. The learned Judge acquitted Sita Ram and has convicted the remaining six, of whom the appeal of only three is before me.

2. That there was a dacoity at the shops of Mahender and Ram Gobind admits of no doubt. That has been amply proved by the evidence of Mahender and the other witnesses for the prosecution, residents of Saleem Garh. The question for determination is whether the three appellants were the dacoits who committed the dacoity at the houses of Mahender and Ram Gobind.

3. The evidence as regards the participation of Bindeshri in this dacoity consists of Mahender, Sarju and Baijnath in the Court of Sessions and the fact that a dhoti and a coat were given to the Sub-Inspector or taken from the roof of his house at Chituna on the 2nd of October.

4. The identification proceeding did not take place until the 14th October 1925; as regards the dhoti and the coat, it took place on the 15th October 1925. The dhoti has been deposed to by Mahender as belonging to him. It is impossible to place any reliance on his statement with reference to the identification of this dhoti, because he wrongly identified another piece of cloth before the Magistrate. As the exhibits have not been sent up to this Court in spite of the repeated letters sent to every Judge in the province, I am unable to say whether that dhoti was of such a

kind that any reliance could be placed on the statement of Mahender with regard thereto. As regards the coat, although it is said to be a coat which was sewn 4 years before the suit and had been discarded by Mahender's son a year before the occurrence, because it had holes in it, rats having got at it, yet I am asked to believe that this is the first item of property entered in the list of articles stolen from Mahender's house. No doubt, the learned Magistrate before whom identification proceedings of the dhoti and the coat took place says that coats of a similar kind were mixed with it; but in the absence of clear evidence that other similar coats with holes in them were before the Magistrate when the coat in question was identified it is impossible to believe the statement of the witnesses or the identification thereof when the first article entered in the list is a coat. A coat like this, if it was entered in the list at the end or anywhere else, might not raise any suspicion, but I suspect that the description of some other coat has been attempted to be passed off as of this coat. The account given by the accused Bindeshri about the coat and the dhoti fits in with the natural probability that, if it belonged to some one who had small-pox, it would not be kept inside the house but out on the roof. I do not think the mere fact that the cloth was covered with some straw on the roof raises any suspicion against Bindeshri. I, therefore, hold that the coat does not belong to Mahender's son. With regard to the identification of Bindeshri by Mahender in the Court of Sessions, I am of opinion that evidence is absolutely false and no attention, whatsoever, could be paid to it. Mahender identified four persons at the jail lock-up on the 14th October, but Bindeshri was not one of them. He identified four persons in the Court of Session, and two of them he had not identified at the jail identification. No doubt, Sarju and Baijnath identified Bindeshri both at the identification proceedings and in the Sessions Court, but I can place no reliance on the identification of this accused who lived within 10 miles of Saleem Garh and there is no satisfactory explanation why this man was not sent to the lock-up before the 8th October. The explanation given seems to me to be futile.

5. As regards the case of Ram Dhani, the learned Sessions Judge has treated the Identification proceedings held at the jail lock-up as substantial evidence against the accused. The learned Judge has overlooked a ruling of this Court in the case of Nagina v. King-Emperor A.I.R. 1921 All. 215, where the law is clearly laid down.

I am not aware of any section of the Evidence Act, which makes the identification proceedings evidence at all. The only evidence, therefore, before the Court was the statement of Birjhan that he was among the dacoits. It appears that this man, Ram Dhani, had the big toe of his left foot cut and therefore had a distinctive mark, which could enable this man to be identified at the jail identification, and that to my mind accounts for the identification there by Mahender and Genda. No attempt was made to bring the statement of Genda and Mahender before the committing Magistrate on the record; and I therefore, do not know whether as a matter of fact, he has identified Ram Dhani in the Court of the committing Magistrate. Moreover, Mahender, as I have already stated, purported to identify the four persons whom he had identified; in jail, but he did not identify Ram Dhani in the Court of Session. The learned Judge has said that in the Court of Session Birjhan did not look at the toe of Ram Dhani, but at his face, to identify him. Really there is no point in that, because the witnesses must have seen Ram Dhani for days in the Court of the committing Magistrate and in spite of that fact Mahender and Genda could not identify him in the Court of Session. I, therefore, am of opinion that the case has not been proved by the prosecution against Ram Dhani.

6. Chaudhur has been identified correctly by Maneshwar only as having taken part in the dacoity. Mahender could not identify him in the Court of Session; and his identification in the Kasia lock-up is no evidence. We are, therefore, left with the solitary evidence of Maneshwar only. I am of opinion that the evidence against him also is insufficient for a conviction.

7. I, therefore, allow the appeals of all the three appellants, set aside their convictions and sentences, and direct that they be released.