

Dinai Vs. the State

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Court : Allahabad

Decided On : Sep-10-1973

Reported in : 1974CriLJ247

Judge : S.K. Kaul, J.

Appellant : Dinai

Respondent : The State

Judgement :

ORDER

S.K. Kaul, J.

1. Crl. Appeal No. 245 of 1971 has been filed by Dinai and Crl. Appeal No. 352 of 1972 has been filed by Dukhi. Both these criminal appeals arise out of a judgment in a dacoity case, Sessions Trial No. 122 of 1969 decided by Temporary Civil and Sessions Judge. Rae-Bareli, in which both these appellants were jointly tried. Since both these appeals arise out of a common judgment, these shall be disposed of together.

2. Briefly stated. prosecution story is that a dacoity took place on the night between 26/27-9-1968 at about midnight at the house of one Chhedi Lal situate in village Sonbarsa, P. S. Salon, District Rae Bareli. Several armed dacoits were said to have committed this dacoity and decamped with the looted property belonging

to Chhedi Lal. Chhedi Lal lodged F.I.R. Ext. Ka-1 next morning at 8.20 a. m. at the aforesaid police station which lay at a distance of about 4 miles from the village in question. Before I take up the question of identification in respect of both these appellants, I must remark that the appellants have been unfortunate inasmuch as neither the committing Magistrate nor the Sessions Judge cared to see the identification memos relating to identification parades about these appellants who were sent up for identification in connection with this dacoity. Had these identification memos been scrutinised properly by the Sessions Judge, no conviction would have followed. It is useless for me to enter into other questions because these appellants have got to be acquitted on the question of performance of the witnesses in connection with the identification parades that were held relating to this dacoity.

3. The first identification parade was held on 15-1-1969 in which Dukhi appellant was put up for identification along with two other persons. This identification parade was conducted by P. W. 8 Sri A. Kumar, Identification memo is Ext. Ka-20. It is true that Dukhi appellant was not represented before the learned Sessions Judge but I must remark that a duty is cast upon the trial courts to put questions in cross-examination where an accused is unrepresented in order to elicit the truth. The learned Sessions Judge should not only have seen the identification memo in question which is Ext. Ka-20. himself, but should have put up a question to P. W. 8 Sri A. Kumar relating to performance of the prosecution witnesses vis-a-vis other suspects who were asked to take part in the parade so as to find out whether, identification evidence of such witnesses! was worthy of credit or not. Had he done so, this injustice would not have been caused. Ext. Ka-20 reveals that in this parade suspects Ram Lakhan. Gaya Din, Gaiadhar, Chhotey Lal. Sheo Nath, Lallan. Santu. Bashir Ali. Chhedoo along with Dukhd appellant were asked to be identified. Witnesses who were examined in the Sessions Trial were Chhedi Lal P. W. 1. Mata Badal P. W. 2 and Ram Lal P, W. 3. Now Ram Lal P. W. 3 in this identification parade correctly identified Ram Lakhan, Gaya Din. Gajadhar, Lallan, Santoo and Dukhi, but committed two mistakes relating to Chhotey Lal and Sheo Nath. Mata Badal P. W. 2 correctly identified Gajadhar, Santu and Dukhi but committed mistakes in the parade of Chhotey Lal, Gaya Din and Lallan. Chhedi correctly identified Gaya Din, Chhotu and Dukhi but committed mistakes in the

parade of Ram Lakhan, Gajadhar. Chhotey Lal. Sheo Nath and Lallan. We, therefore, see that so far as Dukhi is concerned the identification of the three witnesses noted above is bad identification and as such he should not have been convicted by the learned Sessions Judge.

4. I, therefore, allow his appeal and acquit him of the charge punishable under Section 395 I. P. C.

5. Coming to the case of Dinai, his identification took place on 5-2-1970. It is significant to note that so far as this appellant is concerned proceeding under Section 87/88 Cr.P. C. was not gone into. We have noted that dacoity took place in September. 1968. As it is this parade was held after an interval of about 16 months and it is clear that the memory of witnesses was bound to get dimmer and dimmer. However, a perusal of Ext. Ka-27, Which is proved by Sri N. S. Khan P. W. 22, goes to show that out of 8 witnesses who were sent up for identification of this appellant only Chhedi, Mata Badal and Jagdish Bahadur correctly identified him. Jagdish Bahadur was not a witness in the Sessions Court. We are therefore, left only with the identification of Chihedi and Mata Badal P. Ws. As noted above in connection with Dukhi, the identification evidence of Chhedi and Mata Badal is a bad identification. Consequently, it is surprising how the learned Sessions Judge without caring to look into the previous identification memo, which was also on record of this case, convicted this appellant on such a bad identification.

6. I, therefore, acquit Dinai appellant of the offence punishable under Section 395 I. P. C.

7. Both these appeals are allowed. Sentence and conviction awarded to appellants Dukhi and Dinai under Section 395 I. P. C. are set aside.

8. Both these appellants are in jail. They shall be set at liberty forthwith unless they are wanted in connection with some other case.

9. A copy of this judgment be kept on the record of criminal Appeal No. 352 of 1971. Since both these appellants are in jail for a sufficient length of time, the order about release, unless wanted in connection with some other case, may be

sent forthwith to the committing Magistrate concerned.

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