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Court : Allahabad

Decided On : Aug-19-1935

Reported in : AIR1935All1020; 158Ind.Cas.438

Appellant : Dori and ors.

Respondent : Emperor

Judgement :

Iqbal Ahmad, J.

1. This is an appeal by 17 persons who have been convicted by the learned Sessions Judge of Bareilly of an offence punishable under Section 395, Penal Code. The trial was by jury. After the Judge had finished his charge the jury retired to consider their verdict. The foreman thereafter delivered, the verdict of the jury in the following terms:

We do not find the offence proved because although we think that the accused were present there is no evidence that they intended to commit dacoity when they went there. The affair-seems to be rather what happens in a village and in such a case it is quite ordinary to use such an expression as 'even though you out our throats we will not let you cut the crop.' We think that they went to the field with the idea of settling the dispute. I know of such a case in one of my own villages.

2. At this stage the learned Judge stopped the foreman and explained certain matters to the jury and also put certain questions to the foreman to which he replied. Thereafter the jury was asked to retire again to re-consider the facts and the points which the Judge had laid before them. The jury then returned a verdict of guilty as regards each of the appellants and the learned Judge accepting the verdict convicted the appellants. It is contended on behalf of the appellants that the procedure adopted by the learned Judge had no sanction in law and the amended verdict of guilty returned by the jury was illegal. In my judgment, this contention is well founded and ought to prevail.

3. The incident forming the subject of the charge took place in village Pan aria on 2nd January 1935. It is common ground that a sugarcane crop alleged to belong to two persons named Dori and Chet Ram was attached in execution of a decree and was sold by the Amin on 1st January 1935. One Gauri Shankar purchased the same for Rs. 74. Gauri Shankar paid the sale price and the Amin passed a receipt.

4. The Amin delivered possession to Gauri Shankar and left the village. The next day, viz. on 2nd January, Gauri Shankar went with labourers and carts to cut and remove the crop.

5. The case for the prosecution was that after some sugarcane had been cut Gauri Shankar was informed that an attack was to be made on him and he therefore ran away. Immediately after a crowd of 30 or 35 men came from the village to the field. When the crowd arrived they found Balak Ram, the brother of Gauri Shankar, 3 or 4 carts and 10 or 12 labourers. They surrounded and caught some of these while others ran away. Those that were caught were knocked about and kicked and the cane that was cut was taken to the sugar refinery in the village in the carts and on the heads of the labourers. Gauri Shankar had left his 'Lehru' in the field. It is said that the 'Lehru' was covered with cane leaves and set on fire.

6. The case put forward on behalf of the accused was that the cane crop that was sold by the Amin belonged not to Dori and Chet Ram, but to the brothers of Dori named Jiwan and Gomid. It was alleged that on the morning of 2nd January, Jiwan Ram and Gomid tried to have the matter settled through the intervention of a man named Siwa Ram, but their attempt failed. Then some of the accused went

to the field where the cane was being cut and the following conversation ensued between them and Gauri Shankar. The Panwaria party said to Gauri Shankar: 'We will not let you cut this field as it belongs to Gomid and Jiwan.' Gauri Shankar replied 'I bought the field and I propose to cut it.' The Panwaria party then said 'Even though it means that our own throats are cut we will not allow you to cut it.' After this Gauri Shankar and his labourers went away and the cane that was cut was removed by Gomid and Jiwan. The accused denied that they burnt the 'Lehru' or removed any articles belonging to Gauri Shankar or to his labourers.

7. In order to appreciate the observations of and the questions put by the learned Judge to the foreman of the jury after the verdict quoted above was delivered, it is necessary to mention that in the course of the investigation the investigating officer is alleged to have recovered an axle from a certain pond and the case for the prosecution was that the axle was of the 'Lehru' of Gauri Shankar. After the learned Judge stopped the foreman when he was delivering the unanimous verdict of the jury, he (the learned Judge) warned the jury that

(1) the case was to be decided on the evidence on the record and not on any outside personal knowledge he might possess of similar oases, and (2) that whatever might have been the intention of the accused when they went to the field, the jury had to decide whether in the light of what occurred any offence had been committed.

8. The learned Judge further pointed out that

It was admitted that Gauri Shankar had left the field and that the accused's party had taken away at least two cartloads of cane.

and explained that

If they found that the removal of the cane was due to threats given by the accused the offence of dacoity was complete.

9. The learned Judge then asked the foreman whether in the opinion of the jury such threats had been given and his reply was

there may have been threat or there may not have been threat.

10. The Judge then observed that it was no verdict and

the jury must decide whether or not threats had been given if they did not accept the prosecution story of Balak Ram and the labourers having been knocked about by the accused.

11. The learned Judge also told the jury that:

There was also the question of the alleged burning of the 'Lehru' which though not an offence charged as such against the accused, would be strong corroboration of the charge of having threatened the complainant's party to induce them to give up the cane.

12. The foreman then suggested that the

axe alleged to have been recovered from a pond near the house of Munir accused might have been another one.

13. On the learned Judge pointing out that the axe bears the name of Gauri Shankar's brother, the foreman replied that 'this is not usually done.' The learned Judge then pointed out that

Whether or not it be usual, the fact remains that this axe does bear the name of Gauri Shankar's brother, and moreover, it has never been suggested by the defence that the axe recovered could have been in the village by accident. The jury had to face the fact that in Panwaria, if they accept the prosecution evidence as to the actual recovery of the axe, from a pond near the house of the accused Munir and on this man's pointing it out is recovered an axe bearing the name of a man who lives two miles away in village Parasrampur.

14. After the jury have considered the verdict and the foreman has informed the Judge what is their verdict or what is the verdict of a majority, the Judge has no jurisdiction to charge the jury afresh. The law contemplates only one charge by the Court and that after the case for the defence and the prosecutor's reply are concluded (vide Section 297, Criminal P.C.), and there is no provision in law

entitling the Judge either to recharge the jury or to argue out the matter with the jurors after the verdict has been delivered. If the jury after retiring to consider their verdict inform the Judge that they did not understand the law as explained to them by the Judge, it is no doubt open to the Judge to explain the law again to the jury, but there is no provision in law that authorizes a Judge, in the event of his disagreeing with the verdict of the jury, to charge the jury afresh. Where the verdict of the jury is vague and uncertain, Section 303, Criminal P.C., authorizes the Judge to put necessary questions with a view to ascertain whether jury intended to bring in a verdict of guilty or not guilty, but, beyond putting questions with a view to ascertain what the verdict of the jury is, the Judge has no jurisdiction to enter into a discussion of the facts of the case with the jury. If the verdict is general and complete and free from ambiguity, as was in the present case, the Judge is not competent to put questions to the jury, nor can he ask the jury to re-consider their verdict. If the Judge disagrees with the verdict he can proceed under Section 307, Criminal P.C. but he cannot again proceed to charge the jury and ask them to reconsider their verdict.

15. In the case before me the verdict originally delivered was clearly a unanimous verdict of not guilty and the learned Judge therefore had no jurisdiction to again discuss the facts and to ask the jury to re-consider their verdict. The verdict of guilty subsequently delivered by the jury was therefore illegal, and the Judge could not act on the same. It follows that the conviction of the appellants cannot be sustained and must be set aside.

16. The question however remains whether I should order a re-trial of the appellants. In the circumstances of the present case I have come to the conclusion that re-trial should not be ordered. The dacoity was a technical one and no injury was caused to any man of Gauri Shankar's party. The learned Judge of the Court below had 'a strong suspicion' that the removal of the crop and the attack was inspired by the karinda of the zamindar and I share the suspicion of the learned Judge. The learned Judge observed that:

The dacoity was due mainly to annoyance at Gauri Shankar having purchased the cane which was regarded as the property of the local, zamindar.

and therefore a heavy sentence was not called for. Further having regard to the fact that the accused had been in jail for some time, the learned Judge considered that a sentence of nine months' rigorous imprisonment and a fine of Rs. 20 on each of the appellants would meet the ends of justice. The appellants have had to undergo the expense and trouble of a protracted trial. They have been in jail for some time. In view of these facts I do not consider it desirable to order re-trial of the accused.

17. The result is that I allow this appeal and set aside the conviction and sentences passed on the appellants. The appellants need not surrender to their bail. Their bail bonds are discharged.

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