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Court : Allahabad

Decided On : Aug-14-1929

Reported in : AIR1929All928; 121Ind.Cas.103

Appellant : Man Singh and ors.

Respondent : Emperor

Judgement :

Sen, J.

1. Man Singh, Kishori Lal, Balbhaddar Singh, Halke Singh, Rameshwar Singh and Kanhai Singh have been convicted by the learned Additional Sessions Judge of Cawnpore for an offence punishable under Section 396, I.P.C. and sentenced to eight years' rigorous imprisonment each.
2. The learned Sessions Judge acquitted Munian Singh, Sheonath Singh, Babu Singh and Sheonarain Singh.
3. It is proved beyond all reasonable doubt that on 9th May 1928, a highway dacoity of a very serious magnitude was committed at or near Banar Alipur which is in the jurisdiction of the police station of Akbarpur. In the beginning of May, a cattle fair was held at Gajnair and a large number of people had congregated to see the fair and to vend their cattle. On 9th May 1928, sometime towards the evening, as a band of persons numbered 30 and 32 were returning from the fair

and were on their way towards Akbarpur about nine miles from Gajnair, they were suddenly assaulted by a party of dacoits. Fourteen persons were injured. One man of the name of Debi was killed. Cash and currency notes of the value of thousands were looted. A report was made by the village chaukidar at the police station of Akbarpur the same day at about 9 p.m. The report does not give either the names or the number of dacoits, nor does it disclose the nature or value of the property looted.

4. The police investigation started vigorously and at once Rameshwar Singh and Kishori Lal were arrested on 7th June 1928, Babu Singh on 11th June and Balbhaddar Singh on 29th August. Man Singh, who was requisitioned by the police, appeared before the Magistrate and surrendered himself on 13th September 1928. Halke Singh either surrendered himself or was taken in custody sometime in November 1928. The date of the arrest of Kanhai Singh does not appear from the evidence on the record. Kanhai Singh made a detailed statement before a Magistrate of the First Class on 11th September 1928, under Section 164, Criminal P.C. This statement he has subsequently retracted.

5. The houses of the appellants as those of the other accused persons who have (SIC) acquitted by the learned Sessions Judge were searched by the police but nothing incriminating was found in their houses.

6. The case for the prosecution rests entirely upon the confession of Kanhai Singh, which has already been referred to and upon certain identification proceedings, which were held on 9th July 1928, 5th January 1929 and 9th February 1929 in Fatehpur jail, in Cawnpore jail and in Charkhari jail.

7. The learned Sessions Judge had some difficulty in accepting the statement of Kanhai Singh in its entirety. Kanhai Singh figures as a co-accused in the case. The statement of a co-accused is admissible in evidence but according to the usual practice and as a rule of prudence it is unsafe to accept the tainted testimony of an accomplice so long as it is not corroborated in material particulars. The difficulty enhances where the said accomplice does not adhere to his statement. In the present case, as has already been observed, the statement was retracted by Kanhai Singh.

8. The learned Assistant Government Advocate has been at considerable pains to rummage and ransack the evidence for the prosecution to be able to find out even a scintilla of evidence in corroboration of the statement of Kanhai Singh. There are two material facts about which Kanhai Singh has been rightly discredited by the Sessions Judge. According to Kanhai Singh, the two persons who were responsible for the murder of Debi Singh were Munian Singh and Sheo Nath. The learned Sessions Judge has acquitted Munian Singh and Sheo Nath and has come to the conclusion that their names were introduced into the story told by Kanhai by reason of the influence of Ujagar Singh and Umrao Singh, zamindars, who were in terms of bitter enmity with Munian and Sheo Nath. According to Kanhai, the dacoits were armed with carbine and spears. The injuries received by 14 persons referred to above and also by deceased were all injuries which could have been caused by blunt and not by pointed weapons.

9. The date of occurrence was 9th May 1928, and the identification proceedings took place between 9th July 1928 and 9th February 1929.

10. On 9th July 1928, Kishori Lal and Rameshwar were identified by a certain number of witnesses at the Fatehpur Jail, Laljit, Ram Charan and Debi Prasad identified Kishori and Hira Lal, Ganga Din, Kishan Prasad, Debi, Dariao and Ajudhiya identified Rameshwar.

11. Kanhai Singh, Balbhaddar and Man Singh were identified in the Cawnpore Jail on 5th January 1929. Kanhai by Hira Lal, Laljit, Ganga Din, Ram Charan, Dariao and Ajudia, Balbhaddar, by Hira Lal, Laljit, Ganga Din and Ajudia and Man Singh by Hira Lal, Ram Charan and Dariao.

12. On 9th February 1929, Ganga Din, Hira Lal, Dariao and Laljit identified Halkey Singh at the Charkhari Jail,

13. The evidence as to identification ought in each case to be subjected to a close and careful scrutiny. It is an important factor whether all the persons identified were previously known to the witnesses or were perfect strangers to them. It is not pointed out in this case that barring Balbhaddar Singh any other accused person was known to the identifying witnesses. The time of the occurrence, the state of

the light and the opportunities which the witnesses had of identifying are material circumstances. The range and the distance from which the witnesses say that they saw the accused ought to be determined. Did the witnesses know anything particular in the features of the accused or of any one of them? Did they notice anything peculiar in their dress? Was there anything particular in the conduct of any of the accused persons which had impressed the witnesses? Did they get the front view or merely the side view of any of the accused persons? These are matters which the witnesses should be able to depose to and ought to be deposed to in each and every case. Unfortunately these matters are not sufficiently brought to light either by the counsel or by the Court in a great majority of cases.

14. The judgment of the learned Sessions Judge contains excellent reasons why the evidence relating to identification should not be accepted. The full passage from his judgment may be produced:

Ganga Din identified three right men and two wrong men in Fatehpur Jail, and three right men and six wrong men in Cawnpore Jail.

Ramcharan identified three right man and two wrong men in Fatehpur Jail. He identified two right men and two wrong men in Cawnpore Jail. He could not identify Sheo Nath in the Magistrate's Court and identified Sheonarain Singh whom he did not do in jail.

Hira Lal identified three right men and three wrong men in Fatehpur Jail and three right men and one wrong man in Cawnpore Jail. In the Magistrate's Court he did not identify Mania and Kanhai whom he did in jail.

Kishen Prasad identified one right man and one wrong man in Fatehpur Jail.

Ajudhia identified two right men and two wrong men in Fatehpur Jail and he identified two right men and four wrong men in Cawnpore Jail.

Daryao identified one right man and three wrong men in Fatehpur Jail and two right men and one wrong man in Cawnpore Jail.

Debi Prasad identified three right men and two wrong men in Fatehpur Jail. He identified Man Singh in this Court and Magistrate's Court which he did not do in jail and did not identify Rameshwar Singh here or Magistrate's Court.

Halkey Singh was identified in Charkhari Jail. He was mixed up with nine other under-trials. Daljit, Ganga Din, Hira Lal and Daryao identified him. There was no wrong identification in Charkhari.

15. The identification in Charkhari Jail appears to be mysterious. Witnesses had blundered about identification in various instances in Fatehpur and Cawnpore Jails, but they were immune from such mistakes in Charkhari Jail. It is worthy of notice that of the persons who were acquitted by the learned Sessions Judge. Mania Singh was identified by Hira Lal, Laljit, Ram Charan and Debi Prasad, Sheo Nath by Hira Lal, Ganga Din, Ram Charan and Ajudhia. Babu Singh by Laljit and Ganga Din. The learned Sessions Judge did not consider the evidence of these witnesses to be of any value as against Mania Singh, Sheo Nath and Babu Singh.

16. It is difficult to find any real difference between the case of Kanhai Singh and the remaining five appellants. It is perfectly clear that upon the evidence the conviction of Man Singh, Kishori Lal, Balbhaddar Singh, Halkey Singh and Rameshwar Singh cannot be sustained. The statement of Kanhai Singh is entirely unworthy of credit. It is uncorroborated. The evidence relating to identification must be discarded as absolutely worthless.

17. The only evidence of any moment against Kanhai Singh is his retracted confession. His statement has been found to be untrue in certain material particulars. It cannot be stated with certainty that the statement was voluntary or that it was true even so far as it affects himself alone. What became of the currency notes and cash worth Rs. 1,000, which were the spoils of the dacoity?

18. It is not without certain amount of reluctance that I give Kanhai Singh the benefit of doubt.

19. The result is that I allow the appeal, set aside the conviction and sentence of Man Singh, Kishori Lal, Balbhaddar Singh, Halkey Singh, Rmeshwar Singh and

Kanhai Singh under Section 396, I.P.C. and direct that they be released forthwith.

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