Subedar and ors. Vs. Emperor

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Court : Allahabad

Decided On : Jul-17-1923

Reported in : 77Ind.Cas.890

Judge : Walsh, J.

Appellant : Subedar and ors.

Respondent : Emperor

Judgement :

Walsh, J.

1. This case six men have been convicted of the offence of making preparation for a dacoity and sentenced to varying terms of imprisonment of some severity. The first two Subedar and Ram Chander have already been convicted of a dacoity and sentenced to eight years' imprisonment, which conviction and sentence has been confirmed by me in the connected case. I have no doubt whatever as to the guilt of all the appellants. The same approver Narain who gave evidence in the connected case has also given evidence in this case.

2. I should not, therefore, interfere, or say anything about the details of the case, if it were not for one unfortunate circumstance in the way in which, the learned Judge has dealt with one feature in the evidence. A technical point has teen argued on behalf of the applicants, and in my opinion it is a good one. With regard

to some of the accused it happens to posses little or no importance. I will deal with the way in which it affects the care of the appellants in detail in a moment. But it is a point of general importance effecting other accused, and a point upon which the learned Judge ought never to have made a mistake at all. The point is really an elementary one. I have no doubt 1he learned Judge is quite familiar with Sections 25, 26 and 27 of the Evidence Act, but the complaint against his judgment is that he has misapplied lied the sections. Tie point arises in this way. The approver and one of the appellants were arrested practically red-handed. They made statements to the officer who arrested them involving admissions of guilt. They went further and gave a list of the other members of the gang. Thereupon the officer ma de a report in writing to his superior, containing the information which he had received, including the names of those other persons received from the two men arrested. Somehow or another the learned Judge has described this Police report, which is merely the report of a confession, as 'the First Information Report'. Now the First Information Report is a well-known technical description of a report under Section 154, Criminal Procedure Code, giving first information of a cognizable crime. This is usually made by the complainant, or by some one on his behalf. The language is inapplicable to a statement made by the accused. The novelty of a statement by an accused person being called the First Information Report was to me so strange, that when Counsel for the appellants add resfed his argument tome attacking the Judge's use of the First Information Report, I took no notice of the argument. The learned Judge realised that he was dealing with t confession, but he mementarily failed to appreciate that the document itself was inadmissible, and flat the only way in which the information relied Upon could be used was by Section 27. That is to say with regard to the other accused, the officer giving evidence might say: 'I arrested them in conscience of information received from Narain and Thakuri. When I arrested them they made a statement to me which caused me to arrest these people'. The use which can legitimately be made of such information is merely this, that when direct evidence is given against ire accused at the trial and there was evidence against the accused, it is open to the defence to check such evidence by asking whether the name of a particular secured was mentioned or not at that me. So that it becomes evidence which may he used to test that the consistency of an approver's story, and at any rate is information which leads to

the discovery of the accused in question. It is no evidence of the guilt of the accused, and the mischief into which the learned Judge has fallen and which has teen rightly' complained of, is that he has used it throught-out as evidence of guilt. In discussing the individual cases he for starkly says in the forefront of the points against tie individual accused, that 'his name occurs in the first report,' and he acquits some because their names do not appear in the first report, and in his general discussion in the judgment to says that 'the First Information Report fn question is of the greatest importance'. As regards fair of the accused I am. quite satisfied Hat there was abundant evidence without this inadmissible document. Khuba was attested in the village, where several of 1he dacoits come from, along with Chirenji who was armed with a loaded weapon. He has been identified as being with ether members of the gang in two different places by three witnesses. He unfortunately has a squint. I do not understand why a squint should be regarded as a bar to a legitimate identification. It seems tome rather on and than otherwise. It is quite true that if there is a dishonest investigation an Inspector might tell the witnesses that one of the persons he wanted identified had a squint, and it might be well, if there are many persons a waiting trial with this abnormality, that some of them might to put amongst the crowd for identification, but a man might just as well object to an identification because he happens to wear a black moustache. People with remarkable features take that risk when they take, in on evil course. Chiranji has been sworn to by the approver, and as the Judge says his arrest with a loaded pistol is an incriminating fact against him, and f he has been identified by some of the witnesses. Umrai was with the two appellants whom I have just mentioned and he has also been identified. Thakuri was with Narain when they, were both arrested hiding soon after day-break with a loaded guu and ammunition. In the case of these four I have no hesitation in confirming their conviction and sentences. The case of Ram Chandsr and Subedar is rot quite so simple. Omitting the objectionable report, there is only the identification of witnesses who have made affair proportion of mistakes, and if this was the only thing against them, I should have felt some difficulty in decide my whether I ought not to order a new trial. But I propose take a short and common sense course which cannot possibly prejudice the accused. They have already received eight years for dacoity. If I had the power I would make the sentence in this case run

concurrently. After the eight years their power for mischief will be very much dismissed and it seems an adequate sentence. They must have been gaily of some preparation if not this preparation, and I therefore, uphold this conviction and having no jurisdiction to order the sentence to run concurrently, I reduce the sentence to one of one day to date from the judgment in the Sessions trial. I have taken the pains which I have done to deal with this question, because I thought it right that the attention of the Sessions Judge should be drawn to the point, and that he should realise that in a case of this kind, if the other evidence or other circumstances have raised a doubt as to the sufficiency of the evidence in the case, the time and trouble spent in this case, would have been thrown away because I should have had to order a new trial. Subject to the above modifications the appeals are dismissed.