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Emperor Vs. Kanhaiya

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Court : Allahabad

Decided On : Feb-06-1930

Reported in : AIR1930All481

Appellant : Emperor

Respondent : Kanhaiya

Judgement :

Boys, J.

1. This is an appeal on behalf of the Local Government. A dacoity was committed on 25th October 1928, as a result of which 7 men were put on trial on charges of dacoity and convicted and they have been sentenced to long terms of imprisonment. The present accused Kanhaiya, against whose acquittal the Local Government have appealed in this case, was put on trial in the prior case on a charge of abetment and acquitted. The learned Judge was of opinion that the charge of abetment must fail, that charge being founded on evidence of acts prior to the dacoity. He was of opinion, however, that Kanhaiya was undoubtedly guilty of the charge of harbouring, but held, and we think in view of the facts, rightly, that he could not in that trial convict Kanhaiya under Section 216-A.I.P.C. Subsequently Kanhaiya has been put on trial under Section 216-A, has been acquitted, and the Local Government have appealed. There can, of course, be no question but that the opinion of the learned Judge who tried the original case

cannot be allowed any weight on the merits of the present case. We have only had to refer to it because counsel for Kanhaiya in the present case was anxious that the judgment in the first ease should be considered in support of his argument that the second trial was illegal.

2. On the merits we have no hesitation in saying that the learned Government advocate on behalf of the Local Government has made out his case. The facts are that Kanhaiya was caught on the road very shortly after the dacoity driving a bullock-cart in which were two men, one of whom was sitting, the other lying down, the latter with blood-stained clothes and a broken head. While the Sub-Inspector and his syce, who had stopped the cart, were engaged in arresting the two men in the cart, Kanhaiya succeeded in releasing the bullocks and himself bolting. The bullocks also disappeared. Another man, who was walking alongside the cart, similarly bolted and we hear nothing further of him. Subsequently the ownership of the cart was traced to Kanhaiya and his uncles, and the bullocks which had been in the cart were found at Kanhaiya's house, and Kanhaiya has been identified. The mukhia of his village further gives evidence that Kanhaiya was making false statements as to an alleged theft of his cart and bullocks clearly in order to account for how his cart could have been found on the highroad. It is not necessary to detail this evidence more precisely, for in fact it is so clear that counsel for Kanhaiya has been unable to challenge it in this Court and has felt constrained to accept the facts alleged by the prosecution. On the merits the only argument that was possible before us is as to whether Kanhaiya had knowledge or not that the two men he was taking along in the cart had committed a decoity. We should have mentioned that these two men were among the dacoits subsequently convicted. When we find a man driving a cart along the road containing two persons, one of whom has bloodstained clothes and a broken head, and that those two persons are persons who have in fact recently taken part in a dacoity, it is manifest that the burden lies heavily upon that person to disclose what he knows about the circumstances in which he was found. Kanhaiya, instead of saying anything whatever to excuse himself, if anything could be said, bolted and even up to the last has not attempted to explain how he was there with the cart, but has simply contented himself with denying everything.

3. The conclusion is irresistible that Kanhaiya must have known that the two men had bean taking part in the dacoity and that one of them had been injured in that dacoity. The only other point urged is that the second trial was barred by the terms of Section 403, and an endeavour is made to bring this case within the terms of Section 236, Criminal P.C. Whatever the true interpretation of Section 236 may be, whether it applies only to cases where all the facts are known and only the application of the law is doubtful, or whether it applies only to cases where, while some of the necessary facts can be proved, pointing to one or another of several offences alternatively, one or more facts cannot be proved, which, if proved, would make it clear which of the offences had been committed, or whether it applies to both types of case, it is not necessary for us in this case to determine. It is clear on the words of the section itself that it is only applicable where there is a doubt as to which offence has been committed. Here counsel for the appellant is constrained to admit that in the previous trial there was no question of any doubt at all as to which of several offences had been committed. The Judge was clear that the offence of abetment had not been established. He was equally clear that the offence of harbouring had been established, and if there had been any provision of the law permitting him to alter the charge or to add a charge at the last moment, he would have done so. There was no question whatever of doubt whether on the law or on the facts, as to which offence had been committed. No other section but Section 236 could possibly, in the circumstances of the present case, bring it within Section 403, Criminal P.C. That failing, there was nothing illegal in the present trial. We allow the appeal and convict Kanhaiya under S.216-A, I.P.C. and sentence him to three years' rigorous imprisonment.

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