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Court : Orissa

Decided On : Jul-24-1951

Reported in : AIR1953Ori1; 18(1952)CLT188

Judge : Jagannadhadas and ;Panigrahi, JJ.

Acts : Evidence Act, 1872 - Sections 133; Indian Penal Code (IPC), 1860 - Sections 149 and 395

Appeal No. : Criminal Appeal No. 67 of 1950

Appellant : Barsa Majhi and ors.

Respondent : The State

Advocate for Def. : Govt. Adv.

Advocate for Pet/Ap. : Naba Kumar Das, Adv.

Judgement :

Jagannadhadas, J.

1. The appellants herein who are 23 in number have been convicted by the learned Sessions Judge of Mayurbhanj under sections 148 and 395 of I.P.C. and each of them sentenced to R.I. for two years and 5 years respectively in respect of the two offences, sentences to run concurrently, 35 persons were originally

charged, three of whom died during the pendency of the trial and nine others have been acquitted by the learned Sessions Judge. This case arose out of the Adibasi disturbances in the district of Mayurbhanj which followed on the integration of the Mayurbhanj State with Orissa. There was a section of the Adibasis who were opposed to integration with Orissa and wanted integration with Bihar. There was consequent agitation for merger with Bihar by this section with the help of Adibasis of Bihar. In a short time this agitation took a serious turn. There were uprisings which assumed serious and violent forms in the early part of February, 1949. To meet the situation, the S.D.M. of Bamanghati promulgated orders under Section 144 Cr. P.C. on 5-2-49 banning meetings and carrying of deadly weapons. These orders were disobeyed and there were mob demonstrations accompanied by lootings and murders. The situation was ultimately brought under control by vigorous action of the military police. The present case relates to one such alleged disturbance, in the village Gitilata.

2. Gitilata is a village consisting mostly of Adibasis. One street therein called Patra Sahi is inhabited by Oriya Patras of Weaver class who were in favour of the integration of Mayurbhanj State with Orissa. Besides, there have been previously some ill-feelings between the Patras and the Adibasis of the village. There had been a number of prosecutions against some of the Adibasis of the village in respect of smuggling of rice to Bihar. This appears from Exts. 4-1 to 4-24 and is spoken to by P. W. 17. In these cases the Patras figured as witnesses against the Adibasis. The Adibasis had strong suspicion that the Patras were acting as informers against them. They had therefore a grievance against the Patras which came to a head in the general atmosphere of opposition to the merger with Orissa, which was favoured by the Patras.

The prosecution case is that on 26-2-49 which was the Sivaratri day, the Adibasis of Gitilata along with the Adibasis of neighbouring villages numbering some thousands raided the Patra Sahi armed with bows, arrows and lathis and Tangias. They gathered near the village Chattan where some Patras happened to be sitting. They asked them as to why they gave information to the police about their activities and started beating them and chased them. The Adibasis thereafter entered the houses of the Patras, broke the boxes and other moveables therein

and carried away some articles and cash therefrom. It is further said that at about dusk two of the Patras were tied with ropes, dragged and taken away outside the village to Jaradunguri nearby and that in the night they were killed and offered as a sacrifice after performing a ceremony called Jhumper in order that the Gods may be propitiated and thereby success in their agitation against the merger may be vouchsafed.

3. The accused were charged in the Court below in respect of five offences, (1) under Section 183 I.P.C. for disobedience of the order promulgated under Section 144 Cr. P.C., (2) under Section 148 I. P. C. for rioting armed with deadly weapons, (3) under Section 395 of the Indian Penal Code for committing dacoity, (4) under Section 302 of tne Indian Penal Code for committing murder and (5) for a special offence called Melee under Regulation 7 of 1892 of Mayurbhanj State. The accused were all acquitted at the trial in respect of the offences under sections 144 and 302 of the Indian Penal Code as also of the special offence of Melee under the Mayurbhanj Law. It is accordingly unnecessary to refer to any of the details of the prosecution evidence which are connected with the said charges. It is sufficient in this appeal to confine our attention to that portion of the evidence adduced at the trial bearing on the two charges relating to sections 148 and 395 of the Indian Penal Code. The questions that arise for consideration are (1) Is there sufficient evidence that there was an unlawful assembly of Adibasis at Gitilata on 26-2-49 as alleged by the prosecution and is there sufficient evidence that the offences of rioting under Section 148 and of dacoity under Section 395 have been committed by members of that unlawful assembly. (2) If so, which of these accused are individually guilty under either or both of the sections.

4. There is ample evidence of quite a large number of eye-witnesses substantiating that on the afternoon of 26-2-49, there was a gathering of Adibasis armed with bows and arrows and other weapons in the Patra Sahi of Gitilata, that they went up to the village Chattan where some of the Patras were sitting, confronted them with the question as to why they gave information about them to the police and the military and that they blowed the Singha, beat and chased the Patras, entered into their houses and looted the articles therein. These witnesses are P. Ws. 1, 3, 4, 5, 7, 8, 9, 10, 12, 13, 18, 19, 21, 23, 24, 26, 27, 29, 30, 31, 33,

35, 36, 37, 38 and 39. All the above witnesses are the Patra residents of the village. In addition there are three witnesses from the neighbouring villages, P. Ws. 2, 11 and 46 who are themselves Adibasis. They are also eye-witnesses and fully support the evidence of the Patra witnesses. According to their evidence, they were forced by the Gitilata Adibasis against their will to join in the unlawful assembly but did not themselves take any active part in it. They give definite evidence of the gathering and of the unlawful common object of the assembly. The evidence of these witnesses has no doubt been not relied upon by the learned Sessions Judge on the ground that they are almost in the nature of accomplices. But while it may have been prudent not to act on their evidence in so far as the more serious charges of murder and Melee are concerned, there is no reason to reject their evidence as regards the factum of the gathering and the unlawful common object thereof and the use of force in prosecution of the common object. Therefore inspite of almost all the eye-witnesses being the Patras, which was inevitable in the circumstances of the case, the prosecution evidence that there was rioting under Section 148 I.P.C. must be taken to have been fully made out.

5. There is also ample evidence that the offence of dacoity had been committed by some at least of the Adibasis that had gathered there. There is clear evidence of eye-witnesses that groups of Adibasis entered into the houses of the Patras, broke open the boxes and carried away cash, clothing and valuables. The articles so said to have been carried away, have not been recovered and no searches in the houses of the accused have been made for the same; but in the situation then existing that was obviously difficult, if not impossible. The investigating officer, P. W. 47, however, searched the houses of the various Patras, whose houses were looted and he found quite a large number of broken boxes and other indications of looting, which have been seized and marked as M.Os. In the circumstances they are sufficient to corroborate the direct evidence of looting and carrying away. (The judgment then refers to evidence adduced by P. Ws. and continues.)

6. The above evidence is quite ample to make out that the offences of dacoity have been committed. In the above summary of evidence relating to removal of articles from each of the houses it may be noticed that the evidence in each case is of the husband and the wife. In some of the cases it is only the wife that has

given evidence of having actually seen the removal and the husband has given only corroborating evidence of the loss of those articles. The evidence of all these instances is that the male folk had mostly gone to the village Chhatan where there was the preliminary altercation between the Adibasis and the Patras and the women folk ran out of the houses on seeing the Adibasis entering, them. A general criticism has been levelled against their evidence that they were not likely to have seen the actual removal of the various articles as they must all have fled away. But the evidence clearly shows that they were each of them hiding themselves at some distance away from their houses and were able to see the persons who had entered into the houses and to identify some of them. There is no reason to distrust this evidence. As already stated before, the fact that the actual articles removed by looting have not been ultimately recovered from any of the Adibasis is of no consequence. It is true that no details of the properties removed or lost were furnished to the police until some time after the occurrence. But that is also not a circumstance falsifying the prosecution evidence. As pointed out by the learned Sessions Judge this was only to be expected in the circumstances of the case inasmuch as all the Patras with families fled away from the village for fear of their lives immediately after the occurrence and returned to their houses only after peace and order were restored. There is also the criticism that there is no mention of the removal of any articles by looting in the F.I.R. Ex. 6 furnished by P. W. 29 on 27-2-49 or of the persons who actually removed. But this is explained, as the learned Sessions Judge points out, by the fact that P. W. 26 had to conceal himself at the time, as he was attempted to be beaten by the Adibasis and remained hiding in a nearby room of P. W.3's house and that he had to run away to the Police to lodge information before he had the opportunity of getting detailed information of the entire occurrence. There is thus no doubt at all that a number of Adibasis entered into the houses of various Patras and looted the articles therein and removed some of them. The evidence also clearly shows that in each instance of looting and removal of articles from the individual houses the group that entered each house and committed looting consisted of more than five persons. There can therefore be no reasonable doubt that offence of dacoity under Section 395 has been committed by a number of persons out of the Adibasis.

7. The only question therefore that still remains for consideration is as to which out of these appellants have been proved to have participated in the rioting or in the dacoity or in both. The learned Sessions Judge has said that since the rioting and dacoity have formed parts of the same transaction, and the two have been done at the one and the same time, the accused persons liable for rioting will become liable for dacoity as well and vice versa. This assumption is not necessarily correct. Persons who are members of unlawful assembly and are guilty of rioting under Section 148 would not all of them be necessarily guilty of the offence of dacoity. That would be so only if robbery and dacoity are also the common object of the unlawful assembly and the offence of dacoity was committed in prosecution of the said common object, of which there is no reliable evidence. The fact that the unlawful assembly, rioting and dacoity formed one transaction would not be enough to make persons who were not actual participants in the dacoity liable, unless the common object of dacoity is made out and the case falls within the purview of Section 149 of the I.P.C.

8. The learned Sessions Judge on account of the wrong assumption he has made has not carefully scrutinised whether the individual accused who may have been guilty of the offence of rioting under Section 148 are also guilty of the offence of dacoity under Section 395. We have accordingly had to scrutinise the evidence of the eye-witnesses for that purpdse. At our request, learned Counsel for the appellants, who has appeared amicus curiae, as also the learned Assistant Government Advocate, to both of whom we are indebted have taken the trouble of analysing the evidence and furnishing us statements showing the specific evidence relating to (1) rioting and (2) dacoity, as against each of the individual appellants, and we have checked up the same. As a result of this joint scrutiny, we find that there is ample evidence against each and every one of the individual accused now before us in respect of the offence under Section 148 of the Indian Penal Code. But as regards the offence of dacoity under Section 395 I.P.C., there is no evidence at all against accused Nos. 22 and 28, while in respect of A-26, A-29 and A-34, there is the evidence of only one witness against each, P. W. 4 speaks to the participation of A-26 in the dacoity, but he has not mentioned this in bis statement under Section 162 Cr. P.C P. W. 1 speaks to the participation of A-29 in the dacoity and P. W. 39 speaks to the participation of A-34 in the dacoity.

There is no corroboration of their participation from any other witnesses. A-22 and A-28 cannot therefore be held guilty of the offence under Section 395 I.P.C. and as regards A-26, A-29 and A-34, we consider it safer to give them the benefit of doubt in respect of the offence under Section 395 since there is no corroboration, and in a confused disturbance of this kind there may be scope for mistaken identification. It would follow therefore that while the convictions of all the appellants under Section 148 are to be confirmed, the convictions under Section 395 of the Indian Penal Code are to be set aside only in favour of A-22, A-26, A-28, A-29 and A-34 and the rest confirmed.

9. As regards the sentences, we do not see any reason to interfere with the sentence of 5 years R.I. in respect of the offence of dacoity as against such of the appellants whose conviction therefor is confirmed. As regards the sentences for the convictions under Section 148 of all the appellants, we reduce the sentences from two years' R.I. to sentences of one year's RJ. in each case. The sentences of such of the appellants, who have been convicted for both the offences under Section 395 and Section 148, will run concurrently.

10. In the result, the appeal is dismissed, subject to the modification that the convictions and sentences of appellants Nos. 21, 1, 12, 13 and 4, viz., A-22 Jadua Naik, A-26 Basua Majhi, A-28 Bhima Majhi, A-29 Dadga Naik and A-34 Pandu Naik under Section 395 are set aside and the sentences of all the appellants including the above five in respect of the conviction under Section 148 are reduced to one year. It follows the above five persons will be released on their serving a sentence of one year's imprisonment and the rest will serve out their full sentences as per the order of the learned Sessions Judge.

Panigrahi, J.

11. I agree.

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