

Basu Domb and ors. Vs. State

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Court : Orissa

Decided On : Dec-04-1957

Reported in : AIR1959Ori171; 24(1958)CLT70; 1959CriLJ1203

Judge : P.V.B. Rao, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 339 and 390

Appeal No. : Criminal Appeal Nos. 108 to 112 of 1956

Appellant : Basu Domb and ors.

Respondent : State

Advocate for Def. : A.K. Tripathy, Adv. for ;Govt. Adv.

Judgement :

P.V.B. Rao, J.

1. The five appellants were convicted by Shri B. Panda, Sessions Judge, Koraput, Jeypore for an offence of dacoity punishable under Section 395, I. P. C. and were sentenced each to undergo rigorous imprisonment for five years and to pay a fine of Rs. 50/-, in default to undergo rigorous imprisonment for a further period of two months.

2. The prosecution case is that on 13-9-55 the appellants along with two others committed dacoity inside a forest known as Kadamapadara by robbing one Kusuna Rampuria (P. W. 1), his wife (P. W. 2) and his sister (P. W. 3) of their gold and belongings by show of force. P. W. 1 Kusuna Rampuria is a resident of the village Gadagunda and runs a tea-stall and carries on a small shop of sundry consumers' goods in his village. He also takes his tea-stall and the shop for sale at the Ramgiri and Pra-dhaniguda Hats on Tuesday and Thursday. It is stated that on the date of occurrence (Tuesday), P. W. 1 along with his wife Tulsa Bhumiani and his sister Rukuna Bhumiani left for the Ramgiri Hat along with the articles and equipment of the tea-stall and the shop for sale at the Hat.

After sale at the Hat, they left for their home in the evening, P. W. 1 carrying the vessels and utensils of his tea-stall while his wife (P. W. 2) was carrying some rations purchased in the Hat in a basket and his sister Rukuna (P. W. 3) was carrying some other articles, such as, onions, cocoanuts, dry fishes etc. It is the prosecution case that while they were proceeding homewards on their way in this fashion at 4 p.m., seven persons including the five appellants appeared all armed with lathis. Two of them including the appellant San Sukra Domb came in front of P. W. 1 with lathis in hand and one of them all at once snatched away the four gold amulets (M. O. 1) from the neck of P. W. 1 and the other, appellant San Sukra Domb, snatched away his Covvdi (Bhar) consisting of all the articles he was carrying.

In the meantime, two other appellants Sombaru and Narayan went near the wife of P. W. 1 and appellant Sombaru snatched away the nose-rings from her person while appellant Narayan took away the basket which she was carrying on her head with all its contents. Appellant Chandra snatched away the basket from the head of the sister of P. W. 1 and another person snatched away the gold ornaments from her nose and ears. Appellant Basu Domb was standing at a little distance and keeping watch if anybody else was coming in that way. After committing the robbery, all the seven persons went away into the forest.

Then P. Ws. 1, 2 and 3 proceeded ahead weeping all the way and met three persons of Tenluliguda before whom they narrated about the unfortunate incident

and came with them to the spot and showed them the place of occurrence, but no trace of the robbers could be found. They also reported to the Naik (P. W. 5) of Tentuliguda. It is curious that P. W. 1 did not disclose about the occurrence to anybody except his own relations, nor did he report the matter at the police station

The case came to light when the Assistant Sub-Inspector of Boipariguda Police Station (P. W. 8) came to the village of the appellants on 23-9-55 in connection with the investigation into another case. He searched the houses of the five appellants and also the houses of one Mudi Domb and another Dhanurjay Domb and recovered several articles from their possession including some brass tumblers on which the name and place of residence of P. W. 1 were found inscribed. On the clue furnished by these recoveries, the Assistant Sub-Inspector sent for Kusuna Rampuria (P. W. 1) and on 26-9-55 about 13 days after the occurrence, First Information Report was lodged and investigation commenced.

3. All the appellants denied the charges against them and pleaded not guilty. They denied also the recoveries and said that the articles stated to have been recovered did not belong to them.

4. P. Ws. 1, 2 and 3 are the victims. They stated as to the prosecution case. They also identified the appellants at the Test Identification Parade as also the articles seized from the houses of the appellants. Their evidence was corroborated to some extent by P. Ws. 4 to 6. From the house of the appellant Basu Domb, the basket (M. O. XV) and two brass tumblers (M. Os. III-a and III-b) were recovered. From the house of Sombaru Domb one brass tumbler bearing the inscription of the name and residence of Kusuna Rampuria (M. O. III-c) was recovered as also some other articles.

From the house of appellant Narayan Domb two brass tumblers (M. Os. III-d and III-e) on which the name of Kusuna Rampuria was inscribed and other articles were recovered. From the house of appellant Chandra Domb one aluminium Dekchi bearing the inscription of Kusuna Rampuria along with some other articles was recovered. From the house of appellant Sana Sukra Domb a brass tumbler on which the name of Kusuna Rampuria was inscribed and other articles were recovered. All these articles recovered from all the appellants bear the name of P.

W. 1 Kusuna Rampuria. Consequently the learned Sessions Judge correctly came to the conclusion that the fact that they were stolen cannot be denied. The articles were also identified by P. W. 7 who is the brother of P. W. 1.

On the recovery of these articles and the identification of the same, the learned Sessions Judge came to the conclusion, as observed in his judgment, that it was clear that those articles which were recovered from the possession of the five accused, belonged to P. W. 1 and that they were stolen on the alleged date of occurrence. That they were stolen and that they belonged to P. W. 1 admit of no doubt. But from the articles and the recovery, it cannot be concluded that they were stolen on the alleged date of occurrence unless the evidence of P. Ws. 1 to 3 is accepted with regard to the occurrence.

5. There is no reason why the evidence of P. Ws. 1 to 3, though they are the victims, cannot be accepted. They stated to actually what took place on the 13th of September 1955 and what they stated to have lost were recovered from the houses of the appellants. Therefore there can be no doubt of the fact that these articles were stolen by the appellants from P. Ws. 1, 2 and 3 and that they were recovered from the houses of the five appellants respectively,

6. Now the question remains as to whether the appellants can be guilty of dacoity and each one is guilty of robbery. In my opinion, the learned Sessions Judge came to a wrong conclusion on the point of law in stating that the facts disclosed in this case amount to a case of robbery and as five persons were engaged in that, the offence is dacoity. The learned Sessions Judge finds in categorical terms,

'Evidently no actual force was used by the alleged robbers at the time the theft was committed, but from the evidence it appears that all of them were armed with lathis and this very fact terrified their victims who practically became dazed and remained dumb. (The latter portion of the sentence is an inference of the learned Sessions Judge.) There was also practically no resistance offered by any of them. I am, however, of opinion that the law does not contemplate that every case of robbery or dacoity must be accompanied by use of violence or resistance.'

I think, in this the learned Sessions Judge is completely mistaken. 'Robbery' is defined in Section 390 of the Indian Penal Code as follows:

'In all robbery there is either theft or extortion.

Theft is 'robbery' if in order to the committing of the theft, or in committing the theft, or in carrying away or attempting to carry away property obtained by the theft, the offender, for that end, voluntarily causes or attempts to cause any person death or hurt or wrongful restraint, or fear of instant death or of instant hurt, or of instant wrongful restraint.

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We are not concerned with the other portion of the definition. According to the definition, in my opinion, there must be use of force, there must be some resistance or there must be fear on the part of the victims of instant death or instant hurt, or instant wrongful confinement. These ingredients, according to the judgment of the learned Sessions Judge himself, do not appear to exist in this case. In coming to the conclusion that the offence committed in this case is dacoity, the learned Sessions Judge relied upon a decision of the Allahabad High Court in the case of Ram Chand v. Emperor, AIR 1933 All 114, in which it was held,

'A dacoity in which no resistance is offered and no violence required does not cease to be a dacoity and should not be treated as a theft.'

The appellants in that case were tried for the offence of dacoity but were convicted only under Section 380, I. P. C., the trial Judge having observed,

'Probably the inmates did not resist the dacoits seeing their large number and so peacefully and calmly without using any force or show of force the dacoits acquired the property, and so the offence comes technically within the purview of Section 380 I. P. C.'

This proposition of the trial Judge was negatived by the learned Judges by saying 'that if that were so, any dacoity in which no resistance is offered and no violence

is required will cease to be a dacoity and should be treated as a theft.' No other reasons or authorities were cited by the learned Judges in this decision. In my opinion, the definition of 'robbery' in Section 390, I. P. C. requires that either death or hurt or wrongful confinement is caused or the victims put in fear of instant death, instant hurt or instant wrongful confinement. In the absence of these findings and merely because the articles were removed from the persons of the victims when the appellants were armed with lathis, does not by itself make out a case of robbery. After citing this decision, the learned Sessions Judge goes into realm of speculation. He observed,

'In view of the facts, it is clear that though actually no force was used by the robbers at the time of the commission of the theft, their numerical strength and the fact that all of them were armed with lathis were enough to make their victims believe that force would be used in case they offered any resistance.'

This the witnesses do not say and such a general statement is not enough to constitute 'robbery'. It must be actually found that they were put in instant fear of death, hurt or wrongful confinement. The learned Sessions Judge also goes even to the extent of saying that it was clear that the very presence of the robbers with lathis in hand in front of their victims must be deemed in law to amount to a wrongful restraint, I cannot accept this statement. I do not think that a case of robbery can be made out from the evidence in the case. There is no evidence that any injury was caused or any force was used to any of the victims. But the evidence clearly establishes that the appellants removed dishonestly the articles belonging to P. Ws. 1, 2 and 3 and carried them away, These articles were recovered from the houses of the appellants. Under these circumstances, the appellants can only be convicted of theft.

7. Mr. Tripathy appearing for the State conceded that the offence cannot amount to dacoity, but stated that the appellants should be convicted under Section 412, I. P. C. I do not think that they can be convicted under Section 412, I. P. C. because as already held by me there is no robbery committed by these five persons and consequently the property found in their possession cannot be held to be property which is the subject-matter of a dacoity.

8. I would therefore set aside the conviction and sentence of all the five appellants under Section 395, I. P. C., convict them under Section 379, I. P. C. and sentence each of the appellants to undergo rigorous imprisonment for three years. With this modification the appeals are dismissed.

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