Debi and ors. Vs. the State

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Court : Rajasthan

Decided On : Feb-22-1952

Reported in : AIR1953Raj49

Judge : Sharma, J.

Acts : Evidence Act, 1872 - Sections 9 and 133; Code of Criminal Procedure (CrPC) , 1898 - Sections 337; Indian Penal Code (IPC), 1860 - Sections 391 and 395

Appeal No. : Criminal Appeal Nos. 136 and 140 of 1951

Appellant : Debi and ors.

Respondent : The State

Advocate for Def. : Ram Avtar Gupta, Assistant Govt. Adv.

Disposition : Appeals allowed

Judgement :

Sharma, J.

1. These are two appeals one by Debi and Gopi (No. 136 of 1951) and the other by Gyarsa accused (No, 140 of 1951), in a case under Section 395 of the Indian Penal Code. The charge against the accused was that conjointly with two others,

that is, Hukma and Nanda, they committed a dacoity on the 24th of November 1949, in the evening at Taliyari Dungari near Jalaiya outpost. It was alleged that they gave beating to Heera, Ganpat, and Bhura Gujars, who were returning from Bundi after selling Ghee, and robbed them of their clothes, ornaments and cash. A report was lodged on that very day at Kotwali, Bundi, by Heera, one of the victims of the alleged dacoity. Investigation was taken in hand, and the five accused were arrested on different dates between the 21st Jan. 1950, and 25th Jan. 1950, Between 22nd of January 1950, and 21st Feb. 1950, certain property was recovered from the possession, or at the instance of different accused.

On the 16th of March 1950, the five accused were put up at an identification parade before Mr. Allauddin Khilji, Magistrate. Heera, Bhura and Ganpat were identifying witnesses. Of them, Heera identified all the five accused, Bhura identified all excepting Hukma, and Ganpat identified only Gyarsa, Nanda and Hukma. The case was ultimately challaned, and thereafter committed to the court of Additional Sessions Judge, Bundi. All the accused denied the charge, but admitted that the properties alleged to have been recovered from their possession was so recovered. They, however, stated that the property belonged to them. They also admitted that some of the prosecution witnesses had identified them at the identification parade, but alleged that they were known to them since long before, and that even before the identification they were pointed out to the identifying witnesses outside the place where the parade was held. The learned Sessions Judge has found that the identification of the accused was not altogether proper, as they were put up at the identification parade about two months after their arrest. He has also pointed out that the accused were taken from place to place by the police between the date of their arrest and the date of their identification, and the possibility of their being seen by the identifying witnesses cannot be altogether ruled out. He also held that some of the property recovered from the possession of the accused was property of common use, which could be ordinarily possessed by people of the status of the accused. He, however, held that some of the property was such as cannot be said to have been possessed by the accused in a honest way. He found that the statement of the approver, Ramdev, made in the Sessions Court, did not help the prosecution, taut held that owing to his relationship with Gyarsa accused, the approver had made a false statement in the Sessions Court,

and admitting the statement in the committing Magistrate's Court under Section 288 of the Codeof Criminal Procedure, relied upon it for conviction. He, however, acquitted Hukma and Nanda, but convicted Gyarsa, Debi and Gopi under Section 395 of the Penal Code and sentenced them to rigorous imprisonment of three years and a fine of Rs. 50/-each. In default of payment of fine, he awarded four months rigorous imprisonment.

2. All the three accused have appealed from Jail. As has been stated above, one of the appeals that is No. 136 of 1951, has been filed by Debi and Gopi, and No. 140 of 1951 has been filed by Gyarsa. As they arise out of the same case and out of the same judgment, they are disposed of by one judgment.

3. The accused are in Jail and were not represented. I have gone through the record and heard the learned Assistant Government Advocate. On a careful perusal of the judgment of the learned Sessions Judge, I find that there are a number of circumstances which make the case against the accused very doubtful.

The occurrence took place on the 24th November 1950, and the five accused were arrested on various dates between 21st Jan 1950, and 25th January , 1950. I do not find any explanation on the file why they were not put up for identification before a Magistrate within a reasonable time from the date of their arrest. They were all put up at the identification parade on the 16th of March 1950, i.e., about two months after their arrest. It has been admitted in the prosecution evidence that during this period of two months the accused had to be taken several times in and out of Jail, and the prosecution evidence has been unable to prove that in the course of their transit, precautions were taken so that they might not be seen by the witnesses who were to identify them. According to the accused the witnesses knew them from before, and if that is true, the identification would be of no value. But, even if it be taken that the accused were not known to the identifying witnesses, the fact that there were several occasions on which they could be seen by other persons makes the identification very doubtful. The learned Sessions Judge has himself not relied upon this identification in the case of Nanda and Hukma. There does not appear to be any special reason why the identification should have been relied upon in the case of these three accused.

4. The other evidence against the accused is that of the recovery of certain articles from their possession. Certain property was recovered from Hukma and Nanda, but the learned Sessions Judge acquitted them on the ground that it was of common use. In the case of three appellants also almost all the property, excepting silver bracelets, was such as was of common use. From the possession of Gyarsa, 'dhoti' and 'pachewara' were recovered but the learned Session Judge has himself said that they were of common use, and it could not be said that they were necessarily those 'dhotis' and 'pachewaras' which were mentioned in the 1st information report. He has, however, convicted Debi and Gyarsa, because 'lota' and 'chari' were recovered from their possession. It has been admitted by the learned Go-vernment Advocate himself that these two arti-cles were also such as were of common use, and their recovery from the possession of the accused' should not necessarily lead to the conclusion that they were out of the property which is mentioned to have been looted in the first information report. As regards the silver bracelets also, the learned Government Advocate frankly concedes that the bracelets which were recovered from the possession of Gopi were silver bracelets with lion faces, but there is no mention in the first infor-mation report that the bracelets, which were looted, were having lion faces, rather it has been mentioned that they were bracelets of simple make. There is, therefore, a good deal of doubt as to whether the bracelets which were recovered from the possession of Gopi were those verybracelets which are mentioned in the first information report. Moreover, these bracelets also are not of very great value, and it cannot be said that a villager like Gopi could not be in honest possession of them. There has been another indiscretion committed by the police in this case, which throws a good deal of doubt about the proper identification of the articles. The property recovered from several dacoits was kept together and it was taken out several times. It was not kept sealed, and it cannot be said that there was no possibility of the property having been seen by the identifying witnesses before they identified it before the Magistrate. It cannot, therefore, be held with confidence that there is sufficient corroboration of the evidence of the approver. Ram Dev.

It is a well settled law that the evidence of an approver is to be read with caution and is not ordinarily to be relied upon unless corroborated in material particulars

by independent evidence. As has been said above, the evidence which has been relied upon by the learned Sessions Judge for corroboration of the statement of the approver is of very little value. There is, however, one further difficulty in this case. Even the evidence of the approver is not altogether consistent. No doubt in his statement before the committing Magistrate he implicated the five accused, but when he was examined before the Sessions Court he resiled from his statement in the committing Magistrate's Court and made a statement exonerating all the accused. He stated that the statement which he had made before the committing Magistrate was due to the pressure and coercion of the police. This may or may not be correct, but at least it is very difficult for a Court of law under the circumstances to take the evidence of the approver in the committing Magistrate's court as gospel truth. Under the circumstances of the case, I do not find sufficient evidence to connect the three appellants with the crime. They have to be given the benefit of the doubt.

5. The learned Sessions Judge has made an obvious error in convicting the three accused under Section 395 of the Penal Code. It was alleged that there were only five accused who committed the offence. Out of five, two were acquitted by the Sessions Judge himself. According to his finding only three accused took part in the offence, and therefore, the offence could not, in any case, be one under Section 395 of the Indian Penal Code. This question is, however, of academic interest in the circumstances of the case, because I have held that no offence was proved beyond a reasonable shadow of doubt against any of the accused.

6. Both the appeals are allowed, the conviction and sentence of the accused are set aside, and they are acquitted. They shall at once be releas-ed from Jail unless required in connection with some other case. Fines if paid, shall be refunded.