Prabhati and ors. Vs. State

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Court : Rajasthan

Decided On : Jul-31-1963

Reported in : 1966CriLJ1332

Judge : L.N. Chhangani, J.

Acts : Evidence Act, 1872 - Sections 9 and 27

Appeal No. : Criminal Appeal No. 238 of 1963 and Cri. Appeal (Jail) No. 240 of 1963

Appellant : Prabhati and ors.

Respondent : State

Advocate for Def. : Amrit Raj, Asstt. Govt. Adv.

Advocate for Pet/Ap. : Sobhag Mal, Adv.

Disposition : Appeals dismissed

Judgement :

L.N. Chhangani, J.

1. These two appeals are directed against the judgment and order of the Additional Sessions Judge, Jaipur District, Jaipur, dated 12th March, 1963 in Sessions Case No. 11 of 1961. By this order he convicted the nine appellants of

an offence under Section 395 read with section 397, Indian Penal Code, and sentenced each one of them to seven years rigorous imprisonment and fine of Rs. 500 each, and in default, six months further rigorous imprisonment. The Addtional Sessions judge had tried eleven persons but the two co-accused Handa and Titaria were acquitted. S. B. Criminal Appeal No. 238 of 1963 is by the accused through Advocate Shri Sobhag Mal and S. B. Criminal Appeal (Jail) No. 240/62 is through jail. Both of them shall be disposed of by one judgment.

2. The prosecution case in brief is that on 28th of July, 1958 at about 6-30 P.M. thirteen persons including the present appellants, armed with spears, axes and rifles went to village Bhanwata, a village in sub-division Dausa of District Jaipur, and began firing in the air to create terror amongst the villagers. Some of them continued the firing while some of them entered the house of Kishanlal Mahajan. They gave a beating to Kishanlal's wife and looted his nouse. Thereafter, they entered into the houses of Nathulal and Chhajulal and committed loot. Rewar PW/4 asked the dacoits not to do beating to Kishanlal's wife. Thereupon one of the dacoits fired at him with the rifle and caused injuries to him. Kishanlal was not in the village and was at Delhi. Nathulal was at Kundal and Chhajulal was in the field. Hearing gun-shots Chhajulal came to his village but having been informed by the villagers that the dacoits were looting his nouse, he did not dare go to his house. A number of villagers had also collected while the dacoity was being committed but they kept standing at some distance. The dacoity lasted for about an hour and a half and thereafter the dacoits placed the booty in one bag and went away. Laxminarain PW/3 wrote the report Ex. P. 1 and obtained signatures of Rewar, Harsahai, Balla etc. and then it was sent with Ramswaroop PW/2 to police station, Kolwa. A case under Section 395, Indian Penal Code was registered. The Station House Officer reached the snot on the very night. Chhajulal and Nathulal furnished lists of the stolen property on 29-7-59 which are Ex. Pl/B and Ex. P1/A respectively. Kishanlal supplied the list two days later on 31st July, 1959 and it is Ex. P1/C. The offenders could not be traced for over a year. However, on 14-10-60, the accused appellant Chahat was arrested in connection with an offence under Section 302, Indian Penal Code, in case No. 41 of Police Station, Mandawara.

During investigation Chahat informed vide Ex. P-35-A to Bhagatram, Circle Inspector Berad, District Alwar, on 20-10-60, that he and his associates were concerned in the Bhanwata dacoity and that out of the property robbed at Bhanwata he gave one tagri Ex. 8 to Badloo Chamar and a pair of clip Ex. 6 to Mst. Murli. He also got the tagri Ex. 8 recovered from Badloo Chamar vide seizure memo Ex. P-19 and also got a pair of clip recovered from Mst. Murli vide seizure memo Ex. P-10A. These articles were sealed at the spot and kept in Malkhana. Bhagatram Circle Inspector arrested Sultana, Ramchandra, Shivla, Prabhatia, Dhooria and Titaria on 20-10-60 and sent them to police lock-up. Afl these persons were warned to remain Baparda vide entry in Rojnamcha Ex. P-13, On 28-10-60 he arrested Kannaiya son of Wajira and Handa. They were also sent to police lock up after being warned to remain Baparda.

3. As Bhanwata was in the jurisdiction of police Station Kolwa, sub division Dausa, Bhagatram conveyed the information relating to the arrest of Chachat and other accused in connection with the dacoity at Bhanwata to Mojiram PW-44, Sub Inspector Police, who was associated with Kishore Singh, Sub Inspector of Police, Kolawa (PW-46) in connection with the investigation of the dacoity case. In consequence of this information, Kishore Singh PW-46 went to Alwar on 21-10-60. He first took Chahat, and others in his custody and eventually got them placed in judicial lock-up Alwar. When he took charge of these accused they were 'Baparda' and he took steps to keep them in Baparda and warned them to remain so. He arrested Prabhu and Kanhaiya on 24-10-60. During Investigation the various accused gave information under Section 27 of the Evidence Act leading to discovery of certain facts and the consequent recovery of stolen properties either from the possession of the accused or from some other persons at their instance. These informations were given either to Kishoresingh PW-46 or to Mojiram W-44. The accused appellants except Kanhaiya s/p Wazira and Handa were put up for identification at an identification parade held at Alwar on 24-10-60, conducted by PW-37 G. P. Nagar, Sub Divisional Magistrate, Dausa. Another parade was held on 2-11-60 at Dausa in respect of Kanhaiya son of Wazira and Handa. At the parades seven witnesses, who are prosecution witnesses, 1 to 7 were called upon to identify the accused and the various accused were identified by witnesses ranging from P. W. 3 to P. W. 6. The properties recovered from the possession of

the accused or at their instance were also put up for identification by the complainant Kisnanlal and other witnesses. Out of the thirteen persons concerned in the dacoity Prabbusingh is still said to be absconding. Ramjilal was arrested and also put up for identification but he escaped from police custody and is still absconding. The remaining eleven persons were challaned in the court of First Class Magistrate, Dausa who, after enquiry, committed them for trial to the court of Additional Sessions Judge, Jaipur, District Jaipur, for trial under Sections 395, 397 and 398, Indian Penal Code.

4. The prosecution examined 46 witnesses and produce 69 documents and exhibited 43 material exhibits, Ex. 1 to Ex. 43.

5. The accused pleaded not guilty but led no evidence.

6. The trial Judge held that the prosecution witnesses Nos. 1 to 7 who are eye witnesses of the occurrence, had sufficient time and opportunity to see the offenders and the identification of the accused first at parade and then in court is reliable. He also accepted the evidence of the witnesses who identified the stolen property. He also held that the stolen property was recovered either from the possession or at the instance of the appellants. He however, held that no stolen property was recovered from the possession of Titaria and Handa alias Tikaram. He discussed at length the evidence against the appellants and concluded that accused Chahat, Snivla, Prabhu, Kanhaiya son of Mahdeo, Kanhaiya son of Wajira, Sultana, Dhooria, Prabhatia and Ramchandra were among the 13 dacoits who committed Bhanwata dacoity. He however, held that it was hot established beyond doubt that Titaria and Handa alias Tikkaram were also amongst the 13 dacoits, and consequently acquitted them. He recorded convictions and sentences against the present appellants, who feeling aggrieved, have filed the present appeal.

7. It may be mentioned at the out set (1) that the evidence against the appellants consists of (1) the evidence of identification by prosecution witnesses 1 to 7. (2) The statements of the accused under Section 27, Evidence Act, leading to the discovery of facts and recovery of property either from the possession of the accused or from other persons who state to have received the property from the

appellants.

8. The learned counsel for the defence criticized both the kinds of evidence led by the prosecution and contended that it will not be safe to rely and act upon the evidence and to maintain the conviction of the appellants. Dealing with the evidence of identification first, he made various submissions which are proposed to be examined one by one.

9. It was contended in the first instance that the parades for the identification of the accused were held about 16 months after date of the incident and that such a delay is sufficient to discredit the identification of the accused-appellants by the witnesses. It was contended that human memory is failable and the witnesses could not have retained the impressions as to identity of accused-appellants for such a long time and that in the circumstances, evidence of identification should not be safely accepted and acted upon.

10. It is true that human memory is fail-able and that impressions as to identify of offenders have tendency to fade out with the lapse of time. It is also true that there have been cases in which the identification evidence has been discarded on account of delay under certain circumstances. At the same time it must be pointed out that the circumstances and the manner in which witnesses form and register 'impressions as to identity of the offenders are bound to differ widely. It must also be recognised that individuals have varying powers of observations and registering impressions as to identity; their capacity to retain memories of the impressions also differ. Human experience and common sense considerations, therefore, warrant that it will be dangerous and risky to formulate and act upon any rule of thumb in the matter of appraising the effects of delay in identification. The proper course is that Judges and Magistrates in dealing with such a question should avoid uncritical over-credulity as also unnecessary scepticism and should bring to bear judicial maturity and consider and weigh the circumstances and facts of individual cases and proceed to decide them on a consideration of the individual peculiarities of the cases in the light of experience as to human affairs and the guiding rules of prudence enunciated in the leading cases but without treating them as rigid, mathematical formula. To put it differently, their approach to the

cases should be prudent, intelligent and pragmatic and not mechanical, wooden or unnecessary doctrinaire. This view finds considerable support from following observations in Khilawan v. Emperor. AIR 1928 Oudh 430:

'The only argument put forward upon this point has been that it stands to reach that no man can identify after four or five years a man whom he had only seen once. We do not accept the argument. It is based on pure assumption and contradicted by the fact of the identification itself. Men differ very largely in their powers of observation. One man will remember a face for a very long period though he has only seen its possessor once, and for a very short time. Other men, who are unobservant may not be able to identify persons whom they had a good opportunity or identifying even a short time afterwards. The power to identify varies according to the power of observation and the observation may be based upon small minutes which a witness cannot describe himself or explain. It has no necessary connexion with education or mental attainments. An illiterate villager may and frequently is much more observant than an educated man.'

In Dhaja Rai v. Emperor, AIR 1948 All 241 Wall Ullah J. had an occasion to consider the effect of delay on identification. Before him some cases, namely, Dwarka Singh v. Emperor, AIR 1947 Pat 107; Hazara Singh v. Emperor, AIR 1947 Pat 157 and Chanan Singh v. Emperor, AIR 1933 Lah 299 were cited to support a contention that it is wholly unsafe to accept the testimony of witnesses who go to identification parade after a lapse of some months from the date of the commission of the dacoity. Dealing with the cases the learned Judge observed as follows:

'These are all cases which, to my mind, do not purport to lay down any principle which, divorced from the facts of those individual cases, can be of any help in deciding whether or not a certain set of witnesses who say that they have identified a particular accused or a group of accused persons should be believed. It is obviously, a question of believing or not believing a set of witnesses. Again, this must obviously be a question depending upon the facts and circumstances or each case. The learned Judges, who have decided the cases to which my attention has been drawn, felt that in the circumstances of those cases as

disclosed by the evidence, they were unable to place any reliance on the testimony of those witnesses. To say the least, to lay down a hard and fast rule, with regard to the period of time which may lelapse between the commission of a crime and the identification of the culprits, would be to impose an arbitrary rule which neither common sense nor the statute of law of evidence an of would justify. If there were such a rule, it would be the easiest thing for a culprit to avoid his arrest for a certain period of time and than turn up with confidence that he can go with impunity because of the lapse of the requisite period of time.'

In this view of the law, delay by itself cannot justify the rejection of the identification evidence) irrespective of the facts and the circumstances of the case.

11. Now, considering the facts and the circumstances of the present case there is a clear finding of the trial court that the dacoity was committed before sun-set and lasted for an hour and a half and that the witnesses had sufficient opportunity to see the offenders. The first information lodged within a few hours of the incident mentions 6.30 P. M. as the time of incident. The eye witnesses support this fact. The learned counsel for the defence invited my attention to two facts to support his contention that at the time of dacoity there was darkness and witnesses were not in a position to see the dacoits. He referred to the statement of Shri V. Ram (PW 36) wherein he had stated that PW 6 Rampal had stated before him at the time of parade that he could not see the dacoits properly due to darkness. He also referred to the statement of PW 5 Moosa reading as follows:

^^/kkMk iMk rc /kqa/kyk lk gk jg Fkk**

i.e. when the dacoity was committed visibility was not very distinct. Now, the earlier statement of Rampal PW 6 made at the time of identification parade is not substantive piece of evidence. The witness at the trial made no such statement nor was he faced with the earlier statement. In the circumstances the casual statement made at the time of identification cannot even discredit his own testimony in court much less the testimony of other eye witnesses. The statement of PW 5 Moosa is also vague and general and cannot affect the value or testimony of other witnesses. The other witnesses have clearly stated that there was sufficient light and they could properly identify the offenders.

12. It was also contended by the learned counsel for the defence that the dacoits had muffled their faces at the time of committing dacoity and therefore the witnesses were not in a position to identify the offenders. He relied upon the following portion in the statement of Laxminarain P. W. 8:

MdSrk deVesys jax dh /kksrh ds BkBs lj ij cka/ks gq, Fks A lj ij /kksrh :eky vkSj lkQkvkfn cka/krs gSa% - -dku o xnZu ij BkBk cka/kk Fkk A

This statement properly appreciated does not mean that the accused had muffled their facet so as to conceal their identity. Most probably the statement pertains to the head dress of the offenders. The learned counsel also relied upon the earlier statements of Rewar PW 4 and Moosa PW 5 Ex P-7 and Ex. P-8 respectively but they also do not lead to an inference that the accused had taken precaution to conceal their identify. The triad Judge has discussed this question at considerable length and has concluded that the witnesses had not been hampered in any way in observing the dacoits. From the evidence on record it is clear that there was in the first instance sufficient light at the time of the commission of the dacoity. Secondly, that the dacoity lasted for an hour and a half and that consequently the witnesses had ample opportunities of forming clear impressions about the identity of the offenders so as to retain them for a considerable long time. Eventual successful identification both at parade and in court also lends considerable support to their testimony.

13. Next it was urged that the witnesses omitted to give the description of the offenders during investigation and that the police officers failed to discharge their duty of ascertaining the description of the accused. In support of his contention, learned counsel wanted to rely upon some decisions of various High Courts. I do not consider it necessary to notice them as the question stands concluded by a decision of this Court in Azizkhan v. State, 1958 Raj LW 527 where it was observed as follows:

'It is, however, very difficult for a person who has seen a dacoit during dacoity to give detailed description of his unless he has conspicuous distinguishing marks and only general description is normally possible and this is what has been done by the witnesses. Simply because any particular distinguishing marks were not

given, it cannot be said that the identification was not reliable. One may form a general picture of a particular person in his mind and might be able to identify when he is put up before him, but it is very difficult for persons specially villagers and young boys to be able to give a detailed description of the persons when they have seen for a short time during the commission of a dacoity. That does not however mean that those persons when placed before them cannot be identified by them.'

In the present case, considering the manner and the circumstances under which the accused were traced and arrested, there can be no suggestion that the police failed to ascertain the description of the accused only because it had its own suspected list of persons whom it sought to prosecute. The contention raised in this behalf has no force and deserves to be rejected.

14. Thirdly, it was pointed out that the accused had some distinctive marks, such as marks of injuries or scars, and that the Magistrate V. Ram PW/36 took no steps to cover those defects so as to prevent the pointing out of the offenders by the witnesses on the basis of these distinct marks. This irregularity committed by the Magistrate at the time of parade, argued the learned counsel for the defence, should detract from the value of the identification evidence. I do not see any force in this contention. PW 36 V. Ram has stated that he did consider the marks on the persons of the accused as distinctive. Nothing has been brought out in the cross examination of the witnesses as to whether they had pointed out the accused on the basis of these marks. In my opinion, no substantial irregularity has been committed by the Magistrate, and that at any rate, the irregularity, if any, does not affect the merits of the case.

15. Thus finding no force in the various contentions made on behalf of the defence to challenge the identification evidence I have no hestitation in expressing my agreement with the finding of the trial Judge to the effect that the identification evidence is reliable and safe to act upon.

16. I now take up the evidence furnished by the statements of the accused under Section 27, Evidence Act, leading to discovery of facts and the recovery of stolen property from the possession of the accused or from persons who state to have

received the same from the accused. The learned counsel for the defence in the first instance made a general submission for rejecting the entire evidence in this behalf. It was argued that the accused after their arrest were sent to judicial lock up for arranging identification parades. Then they were taken back into police custody when these accused made statements leading to the discovery of facts and consequent recovery of stolen property. It was suggested that after having remained in the judicial lockup the accused could not be expected to have volunteered to give information under Section 27 and that the entire evidence relating to the giving of information by the accused is suspicious.

17. I regret, I cannot accept such a general argument. No materials have been elicited in the cross examination of the witnesses to make out a foundation for such an argument. A suggestion of this type must, therefore, be rejected. Having failed in the general argument the learned counsel for the defence submits the case of the five appellants as under.

As against him there was an identification evidence of Ramswarup (PW/2), Rampal (PW/6) and Mst. Bhanwari (PW/8). The further evidence against him was that he gave information Ex. P-54 on 1-10-60 that he had given six bangles and three buttons to Mst. Mena of village Sureta. After giving this information he got recovered from Mst. Mena's house six bangles Ex. 11 and a pair of buttons Ex. 23. Mst. Mena PW/18 admitted that she had produced these articles when Shivla accused asked her to produce. She, however, denied that these articles were given to her by accused Shivla and stated that she got them from her father-in-law. Ex. 11 bangles were identified by Kishanlal PW/13 and Mst. Gulab PW/29 and proved to be the property of Kishanlal PW/13. The paid of buttons Ex. 23 was, however, held not to be stolen property.

It was argued that since PW/18 Mst. Mena had failed to support the prosecution case, the accused is entitled to acquittal. The statement of Mst. Mena that the bangles were received by her from her father-in-law has not been accepted by the trial Judge. Mena has remained satisfied with the finding of the court and preferred no appeal against the direction relating to delivery of the property to Kishanlal. On Shivla's information it was discovered that it was in the custody of Mst. Mena. In

these circumstances, the statement of Shivla followed by the discovery of the property in the custody of Mst. Mena is admissible against Shivla and has been rightly relied upon by the trial Judge. The correctness of Shivla's conviction, therefore, cannot be doubted.

Next, he took up the case of the two accused Prabhati and Kanhaiya son of Mahadeo. Against Prabhati, besides the identification evidence, there was the evidence of his statement under Section 27, Evidence Act, made during investigation vide Ex. P-68 that he had given six bangles to Ramjilal Sunar PW/21 through Dhuria Baori of Samras. On this information, bangles Ex. 15 were recovered from Ramjilal. Ramjilal further produced an entry from his Bahi Ex. P-16, relating to bangles. The property was identified by Mst. Gulab (PW/29) and Suwalal (PW/30).

18. Similarly, against Kanhaiya son of Mahadeo, besides the identification evidence there was the evidence of his statement under Section 27 of the Evidence Act Ex. P-56 that he pledged the stolen property with Ramdeo Darji through Kanhaiya son of Wazira. It was argued that the statements of Prabhati and Kanhaiya son of Mahadeo, when analysed, mean that they gave certain property to Dhuria and Kanhaiya son of Wazira respectively, who in their turn gave them to Ramjilal and Ramdeo. That being so, it was contended that only the latter statements of the accused that is Dhuria (who received the property from Prabhati) gave it to Ramjilal ana (ii) that Kanhaiya son of Wazira (who received the property from Kanhaiya son of Mahadeo) gave it to Ramdeo, relate to discovery and are admissible and that earlier portions of the statements that Prabhati gave the property to Dhuria or that Kanhaiya son of Mahadeo gave it to Kanhaiya son of Wazira do not relate to discovery ana are not admissible. Consequently, the possession of stolen property by Prabhati and Kanhaiya son of Mahadeo cannot be held proved.

19. It will be proper in this connection to refer to two leading cases on the point namely, Pulukuri Kottaya v. Emperor, AIR 1947 PC 67 and K. Chinnaswamy Reddy v. State of Andhra Pradesh, AIR 1962 SC 1788. In the Privy Council case the law was laid down in the following term:

'The section seems to be based on the view that if a fact is actually discovered in consequence of information given, some guarantee is afforded thereby that the information was true, and accordingly can be safely allowed to be given in evidence but clearly the extent of information admissible must depend on the exact nature of the fact discovered to which such information is required to relate.'

The last sentence 'but clearly the extent of information admissible must depend on the exact nature of the feet discovered are important. At a later stage their Lordships further observed: The fact discovered embraces the place from which the object is produced and the knowledge of the accused as to this, and the information given must relate distinctly to this fact. Information as to past user, or the past history, of the object produced is not related to its discovery in the setting in which it is discovered.' Thus the exact nature of the discovery has to be taken into consideration in determining the extent of the information admissible. The extent to which the information is admissible arose in a pointed manner in the Supreme Court case. In that case one of the accused had made the statement, 'he had hidden them (the ornaments)' and 'would point out the place.' and a question arose whether the portion of the statement that 'he had hidden them' is admissible or not. His Lordship Wanchoo J. delivering the Judgement on behalf of the Supreme Court quoted at length the relevant observations from Privy Council case and summed up the conclusions as follows:

'If we may respectfully say so, this case clearly brings out what part of the statement is admissible under Section 27. It is only that part which distinctly relates to the discovery which is admissible; but if any part of the statement distinctly relates to the discovery it will be admissible wholly and the court cannot say that it will excise one part of the statement because it is of a confessional nature. Section 27 makes that part of the statement which is distinctly related to the discovery admissible as a whole, whether it be in the nature of confession or not. Now the statement in this case is said to be that the appellant stated that he would show the place where he had hidden the ornaments. The Sessions Judge has held that part of this statement which is to the effect 'where he had hidden them' is not admissible. It is clear that if that part of the statement is excised the remaining statement (namely, that he would show the place) would be completely

meaningless. The whole of this statement in our opinion relates distinctly to the discovery of ornaments and is admissible under Section 27 of the Indian Evidence Act. The words 'where he had hidden them' are not on a par with the words 'with which I stabbed the deceased' in the example given in the judgment of the Judicial Committee. These words (namely, where he had hidden them) have nothing to do with the past history of the crime and are distinctly related to the actual discovery that took place by virtue of that statement.'

In the same case the statement of the other accused that he had given the ornaments to Bada Sab and would have it recovered from him was also held admissible. In the light of the law laid down in these two cases, I have no hesitation in coming to the conclusion that consequently the statements of the accused Prabhati and Kanhaiya son of Mahadeo stating that they gave property to Ramjilal through Dhura and Ramdeo through Kanhaiya son of Wazira are admissible. The contention of the learned counsel for the accused consequently merits no consideration.

20. Lastly, learned counsel referred to the cases or Sultan and Ramchandra from whose houses the stolen property was recovered. It was argued that the house of these persons had no roots and, therefore there was a possibility of the stolen property being planted there. The property was recovered after these two accused gave information. The circumstances under which the property was recovered negatives the property being planted there. There is no evidence or materials on which a suggestion of planting can be reasonably made. The finding of the trial Judge against these appellants is also correct and calls for no interference.

21. Lastly, relying upon the following observations of this Court in Bhurgiri v. The State, 1954 Raf LW 407.

'Recovery of property from an accused cannot, in our opinion, be said to be corroboration of the sworn testimony in court as to the identity of the criminal, for it is possible that the property might have been passed on to the person from whom it was recovered by some one who might have taken part in the crime except in that rare case where the court comes to the conclusion that that was impossible as for example when the dacoits are intercepted then returning from the scene of

crime and looted property is recovered from them. In such a case, however, they can be convicted of dacoity, even if there is no evidence of identification of person at all.' It was contended that identification evidence by itself has not been considered safe and sufficient by the trial court which has consequently acquitted Titaria and Handa. Evidence relating to discovery of the facts and recovery cannot be used to corroborate evidence of identification to sustain conviction for the offence of dacoity. The appellants could be convicted only under Section 411, Indian Penal Code, and not under Section 395, Indian Penal Code.

22. A careful consideration of the decision of this Court in 1954 Raj LW 407 shows that the main question considered in that case was whether the identification in court without satisfactory evidence of identification at a prior parade can be of any substantial value and this question was of course answered in the negative. In that case it was argued that in the absence of evidence of prior identification at parade the recovery of the property can be used for corroboration and this argument was repelled. Obviously their Lordships were not considering a case where there was a satisfactory evidence of prior identification at a parade followed by identification in court and therefore the observations cannot be extended to cases of this type. I do not see any good ground both on a consideration of the fundamentals of the law of evidence as also the dictates of common sense as to why a satisfactory evidence of identification in court corroborated by an equally satisfactory evidence of identification at a prior parade cannot be corroborated and given strength by proof of the possession of property by the accused sometime after the commission of the crime. The last contention of the learned counsel for the appellants also deserves no merits and is rejected.

23. From the above discussions, it is clearthat the conclusions of the Sessions Judge arejustified, that the appellants have been rightlyconvicted under Section 395, Indian Penal Code, thatthere are no merits in these appeals and thatthey are consequently dismissed.