

In Re: Sangan,

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Court : Chennai

Decided On : Dec-06-1915

Reported in : 32Ind.Cas.147

Judge : Abdur Rahim and ;William Ayling, JJ.

Appellant : In Re: Sangan, ;In Re: Ramasamy Naick, ;In Re: Kadakk Arayandi Servai and ;In Re: Mothayan Alias Ant

Judgement :

Abdur Rahim, J.

1. Eight accused persons in this case were tried by the Jury on a charge of dacoity. Of these, one, that is, accused No. 5, has been found not guilty and acquitted.

2. The learned Sessions Judge in his charge to the Jury has gone up to a certain point very fully into the matter. Perhaps he has gone into some features of the case in mere detail than was necessary. The chief objection taken by the learned Counsel for the accused to the charge is, in the first place the absence of any reference to the evidence in support of the defence of the 4th, 7th and 8th accused. All these persons produced evidence of alibi which, if believed by the Jury, would lead to their acquittal. The learned Sessions Judge deals with their case apparently in paragraph 13. All that he says about their defence is this; 'As for the defence made by the Other accused the Vakils for the accused have not

laid much emphasis upon it; and so it is unnecessary to go into it. You have heard how, when I now asked them if they want me to place the defence of the other accused before you, they said that the defence on the whole would rather be content with challenging the credibility of the prosecution evidence than to rely upon the evidence they have put in.' The learned Sessions Judge is required by law to place the evidence of the prosecution, the defence of the accused before the Jury and to draw their attention to the important points arising in connection with the evidence of the accused no less than of the prosecution. It may be, as he states, that the Vakils for the accused did not lay much emphasis upon the evidence adduced on behalf of these accused persons; but nevertheless it was his duty to place the evidence before the Jury and draw their attention to such features of the evidence as in his opinion called for observation. The fact that the Pleaders thought it unnecessary to place much reliance upon the defences of the accused did not absolve the learned Sessions Judge from his duty. Sections 297, 298 and 299 of the Criminal Procedure Code make this clear. There can be no doubt that in a case like this where the case for the prosecution entirely rested on the identification of the dacoits at night, the failure of the learned Judge to deal with the defences and the evidence in support of the defence must have prejudiced these accused persons. It is difficult to say in a case of this nature having regard to the evidence of the prosecution that if the Jury believed the evidence in support of the alibi of the 4th, 7th and 8th accused showing that they were not at the scene of dacoity as alleged by the prosecution, their verdict as regards the other accused might not have been influenced by that fact.

3. The learned Counsel for the appellants has also pointed out that the learned Sessions Judge did not analyse the evidence of the prosecution as against each accused and did not place it separately and clearly before the Jury. In a case of this nature where a number of accused persons were concerned and the question was purely one of identification, it would have been of much help to the Jury if the learned Sessions Judge had summed up the evidence for the prosecution against each accused separately and drawn the special attention of the Jury to the facts alleged against each accused person. The learned Counsel for the appellants has also drawn our attention to several omissions on the part of the Sessions Judge in not having drawn the attention of the Jury to certain statements in the evidence of

the prosecution witnesses which might have been of service to the defence of the accused. It is unnecessary to go into all these in detail. But having regard to the fact that the defence of several of the accused persons was not placed before the Jury, and the evidence of the prosecution against the accused was not summed up separately in a clear and satisfactory manner, I think the conviction and sentence should be set aside and the case should be remanded for re-trial.

Ayling, J.

4. I think the failure of the Sessions Judge to sum up the defence evidence to the Jury must be regarded as a substantial misdirection which may, and probably did, prejudice the case not only of the accused on whose behalf the alibis were set up but of the other accused also. I farther agree that he would have facilitated the task of the Jury if he had analysed the prosecution evidence against the individual accused, though I should hardly be prepared to say that his failure to do so would by itself constitute misdirection. I agree in the order proposed by my learned brother.

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