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Court : Chennai

Decided On : Jan-08-1912

Reported in : 14Ind.Cas.655

Judge : Spencer and ;Sundara Aiyar, JJ.

Appellant : Venkattan Alias Venkatachellam and ors.

Respondent : Emperor

Judgement :

1. This is an appeal against, the conviction of the 1st, 2nd, 5th and 6th accused in Sessions Case No. 23 of 1911 in the Sessions Court of Tanjore. The case was tried by a Jury, the charge against the accused being dacoity. Two other accused, the 3rd and the 4th, were acquitted by the Jury. So far as the first accused is concerned, the only evidence of identification of him as one of the persons who were present at the dacoity was given by Alamelu, the 7th witness, who was deaf and dumb. We find that she could not be cross-examined by the Vakil for the accused. The learned Sessions Judge notes, in her deposition, that it was found impossible to convey to the witness the questions which the Vakil for the accused sought to put to her in cross-examination. If it was not possible to make the witness understand the questions put in cross-examination, we fail to see what guarantee there was that she understood the questions put in examination-in-chief. No doubt, the learned Sessions Judge observes that the witness is particularly intelligent and that he sees no reason to doubt that by her signs she

really intended to convey what is recorded above. Assuming that she did intend to convey what is recorded as her statement, the fact is of no value unless that statement were made by understanding the questions put to her. Besides, it is not clear how the Judge himself was in a position to say that she intended to convey what is recorded as her deposition. It being clear from her failure to understand the questions put in cross-examination that she was not a competent witness, her evidence ought to have been struck out and should not have been put to the Jury. There being no other evidence of identification against the 1st accused, he must be acquitted.

2. As against the 5th accused, the evidence of identification was given by the deaf and dumb witness, Alamelu, and by the Prosecution 1st witness. The latter witness identified both the 5th accused and the 6th accused. The identification was made by him for the first time about six weeks after the occurrence of the dacoity. At an identification parade held before the occasion on which he identified them he did not identify any of the accused. The learned Sessions Judge told the jury that on that occasion neither the 5th nor the 6th accused was present in the group of persons who were shown to the witness. There is no evidence of the fact that the 5th and the 6th accused were not present except the evidence of the first prosecution witness himself. His evidence is of no value, because he could not say they were present, if, as a matter of fact, they were, as he failed to identify them. We must therefore, regard the statement of the learned Sessions Judge that those two accused were not present as incorrect and, therefore, amounting to misdirection. There is no other evidence against either of those two accused that they were concerned in the dacoity. As pointed out by the Sessions Judge, no property has been traced to their possession and, seeing that the identification itself took place a considerable time after the dacoity was committed, we consider it unsafe to convict either of them on the evidence of the 1st witness. We must, therefore, reverse their conviction also and acquit them.

3. As against the 2nd accused, the only evidence of identification is that of the 5th witness, Kunjammal. The learned Sessions Judge failed to bring to the notice of the Jury a fact which we must regard as of great importance, elicited in her cross-examination. She said 'I was not in my proper senses on the night of the dacoity. I

was terrified. I was lying down. I got giddy on seeing the thieves. I lay down on account of giddiness.' These statements, if mentioned to the Jury, must, in our opinion, have weighed with them strongly in deciding whether they would accept her evidence of identification, and the failure to bring to the notice of the Jury these statements of hers must be' regarded as misdirection. The identification was made by her more than three weeks after the occurrence and the evidence given so long after the occurrence by one in the condition that she admits herself to have been in, cannot safely be accepted as a basis for convicting the accused. Against him also there is no other evidence that he took part in the dacoity. The result is, his conviction also must be reversed and he must be acquitted. The conviction of all the appellants is, therefore, reversed and they are acquitted and must be discharged from the custody.

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