

Shyamapada Pal Vs. State

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Court : Kolkata

Decided On : Feb-12-1952

Reported in : AIR1952Cal284

Judge : Harries, C.J. and ; Guha, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Section 297

Appeal No. : Criminal Revn. Nos. 734 and 1194 of 1951

Appellant : Shyamapada Pal

Respondent : State

Advocate for Def. : Nirmal Kumar Sen, Adv.

Advocate for Pet/Ap. : Kishore Mokerji, Adv.

Judgement :

Harries, C.J.

1. This is a petition for revision of an order of an appellate Court upholding a conviction of the petitioner by a trial Court for dacoity and confirming the sentence of three years' rigorous imprisonment.

2. When the matter came before a Benck of this Court of which I was a member we were of opinion that if the petitioner was guilty a sentence of three years'

rigorous imprisonment was far too lenient. The dacoity alleged, was accompanied by considerable force and we therefore issued notice to enhance the sentence.

3. We have now heard argument on behalf of the petitioner and we are satisfied that the petitioner was wrongly convicted in this case-and it is therefore unnecessary to consider the Rule for enhancement. I should merely like to observe that if the present petitioner had been found guilty the minimum sentence which could be imposed upon him for the offence alleged would in my view be five years.

4. The dacoity giving rise to the proceedings took place in the house of one Ramkali Ghose of village Nidoya on the night of May 2, 1949. It is said that at about 2 to 2-30 a. m. on that night a number of dacoits came to the house, threatened the inmates and assaulted some of them and finally decamped with a large-quantity of booty. Later a first information, report was lodged at the police station. But in that report it is clear that the inmates had failed to identify any dacoit.

5. It is somewhat strange that a test identification parade was not held because it is suggested in the first information report that some of the dacoits could be recognised if the inmates had an opportunity of seeing them again. However no test identification parade was held to give the inmates an opportunity of identifying any of the accused persons as being present at the dacoity.

6. The evidence adduced by the prosecution was the evidence of an approver coupled with certain evidence which it was said corroborated the approver's testimony.

7. The learned Judge who tried this case-sitting with a jury directed the jury quite properly that a conviction should not be based upon the approver's testimony unless it was found to be corroborated by other independent testimony.

8. The approver undoubtedly implicated the present petitioner, though he gave a different version in the witness box of the petitioner's activities from that which he gave to the Magistrate when his confession was recorded. In his confession there

is no mention made of the petitioner carrying a gun at this dacoity, whereas in his evidence the approver stated that the petitioner carried a gun and when they were leaving the premises fired the gun near a cowshed.

9. The evidence which it is said corroborates the approver's evidence was the evidence that premises known as 81-A, Kalighat Road had been searched and in those premises had been found certain guns. An Arms expert was called to prove that a fired cartridge found near the cowshed of the house in which the dacoity took place must have been fired from one of the guns recovered at 81-A, Kalighat Road.

10. Unfortunately however for the prosecution there was no evidence to show that the petitioner was in possession of these guns found at 81-A, Kalighat Road. He may have lived there. But it is clear that others lived there and there is no evidence whatsoever to show that this petitioner was in possession of these guns. On the contrary the evidence suggests that others were. Unless there was evidence to establish that the petitioner was found to be in possession of a gun which had been fired on the night of this dacoity then the recovery of that gun would be no corroboration at all of the approver's evidence. The gun might have been in somebody else's possession and if that was so, the recovery so far from corroborating, would tend to contradict the approver's statement.

11. The learned Judge appreciated that there was no evidence implicating this petitioner and another accused with the guns recovered. However he did not tell the jury that as there was no evidence implicating the petitioner with the possession of the guns or either of them then the recovery of these guns was no corroboration of the approver's statement. He ought then to have told the jury that as there was no corroboration, and admittedly no other evidence was suggested to corroborate the approver's statement, the petitioner should be acquitted. He however seems to have left to the jury to decide what they would do if they came to the conclusion that there was no corroboration. The learned Judge ought to have directed them quite clearly that in the absence of corroboration it was the duty of the jury to acquit. In our view the failure so to direct the jury has in this case led to a serious failure of justice. The evidence did not establish the guilt of this accused

and the verdict of the jury and the conviction that followed thereon must be set aside and the accused acquitted.

12. In the result therefore this petition is allowed. The conviction and sentence are set aside and the petitioner is acquitted. The petitioner who is in jail must be released from custody forthwith.

13. The Rule for enhancement of sentence is discharged.

Guha, J.

14. I agree.

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