

Samiuddin and ors. Vs. Emperor

Samiuddin and ors. Vs. Emperor

SooperKanoon Citation : sooperkanoon.com/858280

Court : Kolkata

Decided On : Feb-07-1928

Reported in : AIR1928Cal500

Appellant : Samiuddin and ors.

Respondent : Emperor

Judgement :

1. These three appeals arise out of the same trial and are now disposed of together. Appeal No. 509 is by the three accused persons Samiuddin, Bakshu Mia and Eunoch Mia; Appeal No. 550 is by the accused Nezamat Ali and Appeal No. 621 by the accused Naju Mia. The trial was held by the learned Additional Sessions Judge of Chittagong with the aid of a jury. The jury unanimously found the accused Samiuddin, Bakshu Mia, Eunoch Mia and Naju Mia guilty of an offence under Section 395, I.P.C. and they by a majority of 4 to 1 found the accused Nizam Ali guilty of the some offence. As against Naju Mia, there was an additional charge under Section 75, I.P.C. The learned Additional Sessions Judge agreeing with and accepting the verdict of the jury as aforesaid convicted all these accused under Section 395, I.P.C., and sentenced Naju Mia to undergo rigorous imprisonment for six years and the remainder to undergo rigorous imprisonment for five years. At the hearing before us, Naju Mia and Nizam Ali were represented by learned vakils while Samiuddin, Bakshu Mia and Eunoch Mia were unrepresented, they having preferred their appeal from jail.

2. As regards the facts, there is no dispute, and they may briefly be stated thus : A dacoity was committed in the house of one Jiban Kristo Chowdhury, a zamindar who had also a large money-lending business and his practice was to lend money taking ornaments by way of security. These ornaments were all kept in his house together with a considerable amount of money in cash. On the night of 14th January 1926, a large number of dacoits broke into his house armed with revolvers and swords and, by the light of electric torches broke open the chests and almirahs and took away a sum of Rs. 8,000 in cash and a large quantity of gold and silver jewellery. The first information was recorded at 3-30 p.m. on 15th January by the witness Saroda Charan Chowdhury 14 men were arrested on suspicion on 16th and two test identifications were held on 7th and 9th February respectively in which no witness was able to identify any of the accused persons. The trial continued for over two months and the result was that on 6th April 1926 the accused were all discharged. Nothing more happened until 28th July when the appellant Naju Mia was arrested and, on the following day, his house was searched and a certain number of ornaments some of which are said to have been identified subsequently as part of the proceeds of the dacoity were found. On 30th he was remanded to police custody and, on 2nd August he made a confession before a Magistrate which he afterwards retracted. On 4th October, a charge sheet was sent in which the names of certain of the appellants appeared and it was stated there that the accused Nizammat Ali had absconded, and it was not until 15th February 1927 that he was arrested. A test identification was held on 25th February and there the witness Sarada Charan Chowdhury for the first time identified Nezamat as one of the dacoits. Thereafter the trial proceeded with the result which has already been stated. Mr. Bhattacharji who has appeared for the appellant Nizammat Ali has raised certain objections to the learned Judge's charge to the jury. He says, in the first place, that the test identification which was conducted by a Magistrate of the 2nd Class who was not empowered under the law to hold an enquiry was bad and that, therefore, no evidence with regard to what happened in that test identification was admissible in evidence. He contends that though any Magistrate is competent to hold a test identification, yet if he is not empowered to deal with the matter under enquiry he cannot prove the statements which were made before him under the provisions of Section 157, Evidence Act.

This contention does not seem to us to be well founded. It is plain that no test identification could be held before Nizam Ali was arrested and, as that did not occur until 15th February 1927 the test identification could not take place before that date, though, in point of fact, the enquiry with regard to the other appellants had already begun. Section 164, Criminal P.C. covers the case where a Magistrate acts under this section and records a statement made to him.

3. Mr. Bhattacharji next contends that the learned Judge has not charged the jury sufficiently in regard to the fact that the witness Saroda did not identify the appellant Nizam Ali at the two earlier test identifications and that, in the first information which he lodged, he did not say that he had identified the man. We have examined the charge with great care and we are of opinion that there is no substance in this contention. We find, first of all, that the learned Judge told the jury in dealing with the evidence of Sarada that

he (Saroda) noted the features of one of the dacoits. That man is Nizam Ali. He had his face painted black with some white marks on it. He was taken inside the jail two or three times. He identified Nizam Ali on the last occasion.

4. Then, a note was made by the learned Judge in brackets as follows:

He 'that is, Saroda,' did not say in the lower Court the first time he was examined there that he had noted the features of one of the dacoits.

5. The reference to the statement made by this witness in the lower Court is clear that, in fact, the witness did not say that he recognized Nizam Ali. Then again the learned Judge says that, according to the witness Upendra Lal Chowdhury, Saroda was in his Upendra Lai's) shop on the night of the dacoity and did not come out till the dacoits had left the house of Jiban Kristo. This evidence, it appears, is in direct conflict with what Saroda says that he was sleeping in his own house; and the learned Judge says:

You should bear in mind that Saroda is the first informant in this ease. He says that he was in their cutchery ghur on the night of the dacoity and has identified one of the accused as being among the dacoits. If you believe this witness, Saroda

could not see the occurrence nor was it probable for him to identify any of the dacoits; you should also bear in mind that the witness did not say in the lower Court that Saroda was in his shop that night. He says that he did not say so as nobody had asked him.

6. Later on, in summing up the evidence against each of the accused, the learned Judge says with regard to Nizammat Ali:

Saroda identified him as being among the dacoits

7. Then, in brackets, he says:

You should in this connexion consider the evidence of Upendra Chowdhury that Saroda was in his shop on the night of the dacoity, and should also bear in mind that there were three test identifications in jail and Saroda could not identify anyone on the first two occasions;

and, later on, when dealing with the case of the appellant Eunoch, the learned-Judge says:

You should bear in mind that Exs. F and G show that Saroda could not identify anyone, on a previous test identification.

8. It appears, therefore, that at least on four occasions in the course of his charge, the learned Judge put it to the jury that it was only on the third attempt that the witness Saroda succeeded in identifying this appellant Nizammat., The question evidently that he left to the jury to decide was whether in these circumstances it was safe to accept the evidence given by this witness in Court and he told the jury moreover that, if the first information, Saroda did not say that he had recognized anybody. So,, there can be no room for doubt that the learned Judge put everything in favour of this accused before the jury and we do not consider that he could have done anything more. It was not his business to assume the part of the defence counsel. It was his duty to place the evidence before the jury as he found it and, though the inference left to be drawn reasonably was that it would be unsafe to accept this evidence, it was certainly open to the jury to believe what the witness said and to accept it, if they chose to do so. We think, therefore, that, there

is no substance in the argument, that there has not been sufficient direction on behalf of the learned Judge.

9. We now proceed to deal with the case of the appellant Naju Mia. He has been represented at the hearing before us by Mr. Das Gupta who has raised two points in the course of his argument. The first is that the confession made by Naju was made under such circumstances as to leave little doubt that it was not a voluntary confession and the second is that the learned Judge omitted to charge the jury that the articles found in the house of this appellant were not mentioned in the first list given by Jiban Kristo, on the day following the dacoity. Now with regard to the first point, the confession was recorded by the Sub-Deputy Magistrate Babu Upendra Narain Chowdhury who stated that he had recorded the confession after giving the accused the necessary warning before recording it and also after saying that there was no police officer present and giving him sufficient time-an hour or so-to reflect before committing himself. Now, the confession itself ran like this. The learned Magistrate said:

I am a Magistrate. There is no policeman here, If you want to make any statement of your own free will, you may do so. Don't say anything you are tutored to say. Don't say anything even under threat from anyone. You may say anything or not as you please. There is no obligation of any sort. If you admit anything, it will be recorded as evidence and will, if necessary, be used as evidence against you. Do you want to make any confession?

10. Naju Mia replied:

I want to make a clean breast of everything for the reason that, if I serve the Government in any way, the Government may take pity on me.

11. It is contended by Mr. Das Gupta that this statement of the appellant, Naju Mia is in itself sufficient to render this confession inadmissible. But having regard to the provisions of Section 24, Evidence Act, it seems to us that there must be something from which we are to infer that the inducement or promise was given to the accused by some person who had authority to give it. It is not enough for the accused to entertain a hope, which may turn out to be an idle hope, that in

consequence of his giving certain information, he would be rewarded by the Government. It must be shown that the hope was directly inspired by some one who had authority to make the promise. There is nothing of the kind here. In fact, the opening words of his statements are:

No one has pinned me nor asked under menaces to say anything. I want to unburden myself of all that has happened.

12. Now, with regard to this, the learned Magistrate said that he believed that the confession was a voluntary confession and he gave a certificate to that effect. In dealing with it, the learned Judge says:

Although I have admitted the retracted confession of the-accused Naju Mia, it is for you to appraise the value of that confession. The weight to be given to such confession depends upon the circumstances under which it was given and the circumstances under which it was retracted. It will, in short, be unsafe for you to rely upon the retracted confession of Naju Mia, unless, after consideration of the whole evidence in this case, you are in a position to come to the unhesitating conclusion that the confession is true. Even in that case it is evidence against Naju Mia but not against others.

13. We are of opinion that it is a perfectly correct statement of what the law governing a retracted confession is. The learned Judge then proceeds to put the dates of his arrest, of the search of his house and of his confession and he says that it is after all for the jury to consider whether the confession was a voluntary one and whether there is evidence strong enough to corroborate the finding of certain articles which were stolen in the house of this accused.

14. In regard to the second point raised by the learned vakil, the learned Judge has dealt with all the articles discovered in the house of Naju after the search. Prima facie, the place where they were discovered and the cautious concealment of all these articles would lead to the inference that they were stolen property and evidence was led by the prosecution to show that the articles so discovered were, in fact, articles stolen from the house of Jiban Krishna. The learned Judge has told the jury that some of these articles were mentioned in the list filed by Bam Krista

and that the others were not in that list and he has said:

You should bear in mind that except the Raju and earring no other ornament is mentioned in the list submitted by Jiban Kristo on 16th January 1926. Even with regard to these two items, there is discrepancy regarding weight. In considering the evidence you should in the first place bear in mind the discrepancies and contradictions which I have pointed out to you and to which your attention has been drawn by the defence pleader and you should consider how far those discrepancies and contradictions are due to faulty memory.

15. There was, therefore, a clear direction to the jury that they would have to make up their minds, whether, in spite of these-contradictions, omissions and discrepancies, there was evidence on which they felt that they could safely rely. The verdict shows that they considered the evidence satisfactory. We think, therefore, that there is no substance in this point.

16. We have still to deal with the case of the remaining three appellants Samiuddin, Bakshu Mia and Eunoch Mia. The evidence against these three persons is very much of the same character, and it is of persons who saw them on the day of the occurrence in two sampans and landing at Chowdhury's Ghat and of witnesses who say that they saw them again boarding the sampans at the Chowdhury's Ghat on the day after the dacoity. The prosecution case evidently was that these men were associated together in these sampans both prior to and after the dacoity. Though it cannot be said that that evidence is conclusive, it was no doubt open to the jury, if they thought so, to hold that these facts showed that these appellants had actually taken part in the dacoity and we cannot say that their decision is wrong. This appeal, in our opinion, has no substance in it.

17. On these considerations, we are of opinion that the appellants have been justly convicted. We accordingly affirm the conviction and sentence and dismiss all the three appeals.