

**Channu and ors. Vs. Emperor**

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**SooperKanoon Citation :** [sooperkanoon.com/860613](http://sooperkanoon.com/860613)

**Court :** Kolkata

**Decided On :** Feb-06-1947

**Reported in :** AIR1948Cal125

**Appellant :** Channu and ors.

**Respondent :** Emperor

**Judgement :**

**Roxburgh, J.**

1. These are two appeals by five accused who have been convicted on a charge of dacoity. Two of them Sk. Channu and Bejoy Ghosh have been sentenced to four years' rigorous imprisonment each, and the other three appellants Rajendra Das, Suresh De and Kartick Das to six years' rigorous imprisonment each under Section 395/75 of the Penal Code. The verdict of the jury was unanimous. Two of the appellants, Sk. Channu and Bejoy Ghosh are represented in the appeal; the other three have appealed from jail.

2. There was an approver in the case. The evidence against Sk. Channu consists of the evidence of the approver and the statement of one Sonatan Bera (P.W. 20) who says he saw this man with two others, the approver and Rajendra Das at 2 or 3 P.M. at what is known as Dharma Road, and the evidence of one Asgar Ali (P.W. 22) who saw him with the approver in a Workmen's train at about midday on the day of occurrence. The real evidence against this accused which must have

influenced the jury was some strictly inadmissible evidence given by C.I.D. Inspector Khan Sahib Afajuddin Ahmed (P.W. 19) who was allowed to state that he received information from a source that this Channu and others were going by rail to commit a dacoity at a place near Panchkari's hat. Instead of challenging the admission of this evidence the lawyer appearing for this accused cross-examined the Inspector at some length on the question so that his crossexamination can have only had the effect of more deeply impressing the jury with the importance of this inadmissible evidence. The further prosecution case is that soon after this the Inspector received information that a dacoity had been committed at the house of the complainant and this was followed up with the result that some of the property was traced and the other accused arrested including the approver, Bejoy Das Had the evidence been admissible, it was very valuable evidence which would have justified a conviction. However, according to the laws of evidence, this was not admissible and the result is that it is not possible to uphold the conviction of the accused in this case. The other evidence in support of the approver's evidence is of a very slight character and it is very doubtful if, in the absence of the inadmissible evidence, the jury would conceivably have relied on the approver's evidence to convict the accused. The learned Judge himself has pointed out that the approver's' evidence is full of discrepancies and contradictions and therefore it would be particularly very unsafe in this case to rely on it. The result is that we must allow the appeal of Sk. Channu.

3. As regards the appellant, Bejoy Ghosh, the only evidence against him is the statement of the approver and the recovery of four churis at his house. There is some evidence also that being a friend of the family of the complainant in the case, he had been at the complainant's house a few days before the occurrence. As regards the finding of the churis the evidence of the search witness Sital Chandra Das (P.W. 10) and the officer N.K. Barman (P.W. 18) who held the search as given in the trial Court was that the churis were found in a suit-case the key of which was produced by Dhananjay, the brother of Bejoy who said that the suit-case belonged to Bejoy. Obviously, the statement of the brother as to the ownership of the suit-case was not admissible. Dhananjay himself was arrested in the case and released. If it was proposed to prove that the Suit-ease belonged to Bejoy by the statement of Dhananjay, then this could only be done by calling

Dhananjay himself. The other evidence being of such a slender character, and for similar reasons considered in the case of Sk. Channu we must hold that the admission of this inadmissible evidence must have led to an erroneous verdict and the appeal of Bejoy Ghosh must also be allowed.

4. As regards the other three accused we can find no admission of inadmissible evidence or any error in the charge. Rajendra was identified by the complainant in a test identification parade. He is of course also named by the approver and there is evidence of Asgar Ali (P.W. 22) that he was seen with the approver in the train.

5. As regards Kartick Das three items of property were recovered from him a few hours after the dacoity on the information received by the C.I.D. Inspector P.W. 19. As a result of his information, a prompt search/was made and this property was recovered and has been identified as part of the stolen property.

6. The accused Suresh De was arrested on statement by the accused Rajendra Das and with him two articles, a dhoti and a gamcha, were recovered which were identified as part of the stolen property.

7. There was thus sufficient evidence in the case of these accused all of which if accepted Would justify their conviction and we see no reason whatever for interference with the verdict of the jury in the cases of these three accused.

8. The result is that the appeals of S.k. Channu and Bejoy Ghosh are allowed. Their Conviction and sentences under Section 395, Penal Code, are set aside and they are discharged from their bail. The appeals of the other three appellants Rajendra Das, Suresh De and Kartick Das are dismissed.

**Chakravartti, J.**

9. I agree.