

Ram Bilas Singha Roy Vs. the State

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Court : Kolkata

Decided On : Apr-25-1955

Reported in : AIR1955Cal527,1955CriLJ1346

Judge : J.P. Mitter and ;Guha Ray, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 321, 379 and 394

Appeal No. : Criminal Revn. No. 332 of 1955

Appellant : Ram Bilas Singha Roy

Respondent : The State

Advocate for Pet/Ap. : S.S. Mukerjee and Tarak Nath Roy, Advs.

Judgement :

J.P. Mitter, J.

1. This Rule is directed against an order of conviction under Section 394, Penal Code and a sentence of four years' rigorous imprisonment.

2. The petitioner and two others were tried upon a charge of robbery by an Assistant Sessions Judge of Midnapore sitting with a jury. The jury by a majority verdict of 3 to 2 found the petitioner guilty of the offence under Section 394, Penal Code. This verdict the learned Judge accepted,. Accordinglyhe convicted the

petitioner and sentenced him as aforesaid.

3. The prosecution case against the petitioner and the co-accused was as follows :

4. The complainant Mohar Lal Ghose was at the material time living with a concubine named Kali Dassi. There also lived with them a young daughter of this concubine. On the night in question while Mohar Lal Ghose, Kali Dassi and the youngdaughter Chhabila Dassi were sleeping on the verandah of a shed the petitioner and three others trespassed into it at about mid-night. The barking of dogs roused Mohar Lal Ghosh and Kali Dassi from their sleep. They found four persons surrounding the bed. One of the intruders had a torch in his hand which he flashed. The other three persons including Ram Bilas Singha Roy, the present petitioner, began assaulting the complainant with the lathis which they carried. Mohar Lal Ghosh recognised the petitioner in the light of a lantern which was then burning. Kali Dassi also recognised the petitioner Ram Bilash Singha Roy.

After beating the complainant and Kali Dassi, two of them entered the complainant's 'ghar' after removing the chain with which the door was kept closed and took away boxes containing cash, ornaments and utensils. When two of the robbers entered the ghar the complainant and Kali Dassi managed to slip away. When they got to the village pathway close to the house they raised a hue and cry which attracted their neighbours to the spot.

On -the neighbours being assembled both the complainant and Kali Dassi related the occurrence to them and showed them the injuries which they had received in the hands of the accused. They also then and there told the persons assembled about their recognition of three accused persons including Ram Bilas Singha Roy. After the accused had left, the complainant and Kali Dassi along with the neighbours returned to the house and found paddy and rice lying scattered all over the place. They also found the boxes missing from inside theghar. They also found Chhabila weeping with certain injury on her person.

Owing to the injuries which the complainant and Kali Dassi had received they were unable to go tothe police station the next day, which was at a distance of 15 miles or so. On the 26th, that is, two days after the occurrence, a Second Officer, o

Garbeta Police Station came to the complainant's house upon getting information about the occurrence. It was to this police man that the complainant made a statement about the robbery. After investigation which followed a charge-sheet under Section 394, I. P. C. was submitted against the petitioner and two others already mentioned.

5. Mr. S.S. Mukherjee appearing on behalf of the petitioner has stressed before us only one point, namely, that upon the facts as proved in the case a charge under Section 394, I. P. C. was not sustainable. Mr. Mukherjee argued that had the learned Judge who tried the case explained to the jury that the facts concerned involved two transactions the first of which constituted the offence of hurt and the second an offence under Section 379, Penal Code, the jury would not have returned a verdict of guilty under Section 394, I. P. C. The same point appears to have been taken before the learned appellate Court. On the facts, it appears that Ram Bilash Singha Roy had been inimically disposed towards the complainant owing to the acquisition by Ram Bilash Singha Roy of a pound. It transpired in course of the evidence that while the complainant was being beaten the petitioner said that the beating was with a view to teaching him, that is, the complainant, a lesson. It is to be observed that Kali Dassi was also assaulted on the occasion.

There can be no doubt that although there had existed' enmity between the complainant and the petitioner, the beating was primarily for the purpose of the theft which took place immediately after the assault. The language of Section 394, I. P. C. is wide enough to include a case such as this. On the facts, in our view, there was but one transaction, namely, a robbery. This question was considered by the lower appellate court and we agree that the transaction concerned was one of robbery and could not be separated as suggested by learned Counsel. The point raised by Mr. Mukherjeethus fails.

6. As to the sentence of four years' rigorous imprisonment imposed in the case, we think that it is unduly severe and out of all proportion to the offence. In view of all the facts and circumstances of the case, we think that a sentence of 18 months rigorous imprisonment should be sufficient to meet the ends of justice. We would accordingly reduce the sentence of four years' rigorous imprisonment passed on

the petitioner to one year and six months only. Subject to this reduction of the sentence, this application fails.

7. This 'Rule is disposed of accordingly.

Guha Ray, J.

8. I agree.

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