SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

Baldeo BIn Vs. Emperor

Baldeo BIn Vs. Emperor

SooperKanoon Citation : sooperkanoon.com/871135

Court : Kolkata

Decided On : Mar-16-1932

Appellant : Baldeo Bin

Respondent : Emperor

Judgement :

Panckridge, J.

1. The appellant in this case has been convicted of the offence of dacoity and having bad a previous conviction he has been sentenced to rigorous imprisonment for a period of seven years. He was tried together with a co-accused. The jury found the appellant guilty by a majority of 3 to 2 and unanimously found the other accused not guilty.

2. Various points have been taken on behalf of the appellant. It is first of all stated that the learned Judge was in error in failing to draw the attention of the jury to certain portions of the evidence which tended to show that the number of persons present at the occurrence was less than what the Penal Code requires to constitute an offence of dacoity. After perusing the evidence we have come to the conclusion that there is no justification for this argument. Nearly all the witnesses placed the number of the dacoits at some figure between 8 and 12. It is true that a female witness stated that she could not tell by guess how many were there. But even if she had spoken the truth it was hardly possible that there were less than five. We do not think that this point was improperly dealt with by the learned

Judge.

3. Then it is said that the learned Judge failed to draw the attention of the jury to the weakness of the prosecution case as regards identification. The appellant was identified by two witnesses who professed to have recognized him at the dacoity. The Deputy Magistrate who superintended the test identification was called as a witness and he described the procedure which was followed at the identification parade. We consider that the learned Judge summarized the evidence as to the identification parade in a satisfactory manner and left to the jury to say whether they felt justified in giving any weight to this sort of evidence as to identification. Another part of the prosecution case consisted of a confession made by the appellant to the Deputy Magistrate and subsequently retracted. It was the case of the appellant that this confession was untrue and was induced by threat and persuasion on the part of the police. The learned Judge in discussing the confession drew the attention of the jury to the provisions of Section 24, Evidence Act, and observed that the appellant's confession would be irrelevant:

If you believe that it was caused by inducement, threat or promise by the police as stated by Baldeo Bin, it is for you to consider whether or not the confession was caused by such inducement, threat or promise.

4. Strictly speaking, the learned Judge did not state the law accurately on the point. It was for the learned Judge to decide for himself whether prima facie the confession appeared to him to have been induced by threat or promise and for that reason to be inadmissible. If he comes to the conclusion that it is inadmissible he must exclude it from the i consideration of the jury. The learned Judge appears to have thought that it was the province of the jury to decide this question of admissibility of evidence. In that he was wrong. But even if he had stated the law accurately on this point it would have still been his duty to point out to the jury that the fact that he considered the evidence as admissible did not necessarily mean that it was true and it was for the jury to make up their mind whether they should accept the confession and in doing so they should naturally be guided to a large extent by their opinion on the question whether the confession was voluntary or the reverse. In the circumstances of the particular case there were no materials on

which the learned Judge would have been justified in excluding the confession and so we do not think that even if he misdirected the jury with regard to the confession it has occasioned a failure of justice.

5. A complaint is made that the statement of the accused under Section 342, Criminal P.C, was not put to the jury. When we examine this statement under Section 342, we find that it only amounts to an assertion of innocence and an explanation of how the appellant had made the retracted confession. Having regard to the language used by the learned Judge the jury must have throughout appreciated perfectly well what the appellant's defence was and the reasons for which he maintained that the jury should disregard the confession made by him. We do not think that any harm has been done by the omission of the learned Judge to deal specifically with the statement of the accused in the Sessions Court.

6. Finally, it is said that the search in which it is alleged that certain booty of the dacoity was discovered was irregularly conducted. The learned Judge called the attention of the jury to the suspicious circumstances connected with the search. But even if it was irregularly conducted that would merely go to the weight which the jury would attach to the finding of the property in question and would not make such property inadmissible in evidence. We think that:the jury were adequately warned with regard to this. The learned Judge seems to have had misgivings as to the guilt of the appellant. But he did not think it justified to refer the case under Section 307, Criminal P.C. Although the charge of the learned Judge is not very satisfactory we do not think that there is such a serious error in it as would justify our disturbing the appellant's conviction. Having regard to the previous record of the appellant the sentence imposed upon him by the learned Judge is not too severe. The appeal is dismissed.

M.C. Ghose, J.

7. I agree.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com