

Emperor Vs. Chhanoo Lal Bania

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Court : Kolkata

Decided On : Jul-12-1918

Reported in : 49Ind.Cas.783

Judge : Teunon and ;Newbould, JJ.

Appellant : Emperor

Respondent : Chhanoo Lal Bania

Judgement :

Teunon, J.

1. In this case the accused was tried on charges under Sections 395, 412 and 411, Indian Penal Code. The trial was by Jury in the Court of the Additional Sessions Judge of Howrah and the Jury having by a majority of 4 to 1 returned a verdict of not guilty the case comes before us on a reference made by the learned Sessions Judge under the provisions of Section 307 of the Code of Criminal Procedure.

2. The case for the prosecution was that on the night of the 22nd July 1917 a dacoity took place in the house of one Nandji at Shalimar and that at about 11 a. M. on the 24th July five of the silver articles stolen in the course of the dacoity were found in the possession of the accused in his shop at 401/1A, Upper Chitpur Road, Calcutta.

3. A professing accomplice Fazaldin was examined to say that on the 23rd July at about 2 p. m. he had sold the articles to the accused for a sum of Rs. 40. An Inspector, a watch constable and two' search witnesses were examined to prove the finding or production of the articles on the 24th. The inmates of the house i.e., Nandji, his wife or mistress Ananta Kumari, his two daughters Rajeswari and Dhaneswari, and a would-be son-in-law Gouri Sankar speak of the ornaments. Gouri Sankar, however, can speak of only one (Exhibit IV). Of the two daughters, one Rajeswari identifies four (Exhibits I and II as belonging to Dhaneswari, Exhibits III and IV as belonging to herself), while the younger daughter Dhaneswari identifies three (Exhibits I, II and III). Nandji identifies the same four articles, while the mother Ananta identifies all five including Exhibit VII, a got or chandrarhar claimed as her own. Panna Lal Daw, a Sonar, identifies Exhibit I as an article made in his shop by means of the letter D C D stamped upon it, while one Kasiram Sonar says he made Exhibits IV, III and VII, 2, 3 and 6 years before respectively, Exhibit IV to the order of Gouri Sankar.

4. The defence of the accused was that he knew nothing of any dacoity, that shortly before the arrival of the search Inspector a Marwari had brought the articles to him for sale, and had left them on the pretext of fetching another article left behind by mistake.

5. In delivering the verdict of the majority the foreman apparently volunteered a statement of their reasons in the following terms: 'On the ground that the accused had no knowledge that the articles were obtained by dacoity. '

6. In his letter of reference the learned Sessions Judge lays considerable stress on this statement, as showing that the majority of 4 had accepted the evidence regarding the factum of the dacoity and also the evidence identifying the articles found in accused's shop with articles stolen by the dacoits.

7. But we cannot be assured that the foreman's statement is a complete or exhaustive statement of the reasons which led the Jurors to their conclusions, and to their verdict of not guilty.

8. It is clear that they did not believe the accomplice witness, and the learned Sessions Judge does not suggest that we should give credence to his statements.

9. Having been taken over the whole of the evidence, we think it sufficient to say that we are not satisfied with the evidence of identification.

10. According to the complainant he lost coin and notes to the value of Rs. 800, gold ornaments to the value of Rs. 785, and silver ornaments to the value of Rs. 86. Thus out of properties valued at Rs. 1,800 odd only five ordinary articles valued at most at, say, Rs. 62 have been recovered. Of these again the most valuable, the got or chandrahar (valued at Rs. 36) was not mentioned when the first information was given. It occurs in a supplementary list supplied on the 18th of August and is identified by the woman Ananta Kumari only. Some stress is laid on a test, identification when, in the presence of Mr. Peters, Deputy Magistrate, the witnesses picked out the things they recognised from amongst others. This was on the 30th July (Rajeswari and Dhaneswari), on the 1st August at the hospital (Nandji and Ananta), and on the 18th August, when Ananta picked out the got or chandrahar. But the value of this test identification evidence is greatly impaired by the fact that on the 24th July three of the articles (Exhibits I, II and IV) had been shown to Ananta Kumari by the Sub-Inspector in charge of the Sibpur Thana. Farther, on the 30th July there was no article 'similar to the Champkali (Exhibit III).

11. On the whole we are not satisfied that the guilt of the accused has been established beyond reasonable doubt.

12. We, therefore, acquit the accused and direct that he be set at liberty.

Newbould, J.

13. I agree.