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Court : Kolkata

Decided On : Mar-14-1927

Reported in : AIR1927Cal820

Appellant : Emperor

Respondent : irjan and ors.

Judgement :

1. This is a reference under Section 307, Criminal P.C., against the divided verdict of the jury in a case under Section 395, I.P.C. The jury were divided in the proportion of 3 : 2. It happened that one of the juryman who gave the verdict of not guilty was a person who was not entitled to sit on the jury. He had not been summoned. The reference has been made on the ground that the Court was not properly constituted and that, therefore, the verdict of the jury should be treated as a nullity. The reference has also been made on the ground that the verdict of the jury is against the weight of evidence. We entirely agree that as the Court was not properly constituted, the verdict of the jury counts for nothing.

2. We have, however, been taken through the record of the case, and we find that although the verdict cannot be sustained on one ground under the law, still it is in accordance with the facts of the case, and we should not be justified in ordering a retrial. The dacoity took place in the middle of the night on the 15th May 1926. The son of the owner of the house named Gopesh is said to have recognized five of the accused persons among the dacoits and his mother is said to have recognized

one of the dacoits. The sixth accused is a person who was identified by the mother at a test identification held by the Court before the trial. All the accused persons are local men known to the complainant and his family. It is very unlikely that men known to the people of the house would commit a dacoity without taking precaution to disguise themselves. The inference arising from the fact that the dacoits are said not to have been disguised is further strengthened, as far as the present accused are concerned, by the fact that when the police arrived in the village on receiving information, they found all these men at their houses. There is the further corroboration in the fact that although the police arrived within a few hours of the dacoity, nothing was found in the house of any of these men.

3. The complainant Gopesh seems to have been of a suspicious nature. He says that a few days before the occurrence he returned from Karimganj with Rs. 60 which his brother had given him to carry home, and that he spoke of it to two of the accused on the way and that in answer to this question he told them that he had this money with him. He further said that a day or two later the accused Kantai was moving about near his house and that this roused suspicions in his mind and that he questioned him asking him what he was doing near his house, and Kantai told him that he was looking for his pony. Gopesh says that he told Kantai that it was not likely that his pony had strayed near his house. He apparently showed considerable annoyance at Kantai being near his house because he says that Kantai asked him what right he had to be annoyed at his presence near his house. We find, therefore, that Gopesh had suspicions before the occurrence at his house and, therefore, it was quite likely that he would name the persons against whom he had formed suspicions.

4. Identifications made at night during the occurrence, such as dacoity when blows are struck and the people are terrorized, are generally of very little value. Taking this along with the other circumstances, we think that any jury would be right in refusing to believe such identification. As regards the identification of the six accused persons by Gopesh's mother outside the Courthouse, that matter is very easily explained. The six accused persons were lined up outside the Court with other persons found there. It does not appear that any of the other persons belonged to the neighbourhood of the complainant and therefore the complainant's

mother could have no difficulty in pointing out these men who belonged to her own neighbourhood as she must have known them at least by sight. In all these circumstances, we do not think that there should be retrial. The reference is rejected. The accused are acquitted and will be set at liberty.

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