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Court : Kolkata

Decided On : Apr-03-1928

Reported in : AIR1929Cal287

Appellant : Emperor

Respondent : Nagar Ali and ors.

Judgement :

Rankin, C.J.

1. In this case nine accused persons were tried before a jury and the Sessions Judge on charges under Sections 399 and 402, I.P.C., that is to say, making preparations to commit dacoity and assembling for the purpose of committing the dacoity. Of a jury of five all thought that accused 3 and 8 were not guilty but the verdict acquitting the other seven accused was by a majority of four as against one. The learned Sessions Judge has made this reference thinking that all the accused should be convicted.

2. The story for the prosecution is that one Monohar Ali prosecution witness 22 who was notoriously a bad character, told the police that a dacoity was about to be committed and that the people were going to assemble in the house of one Sabdar. Thereupon the police got an armed force and went to this man's house at the time of the 'preparation of the dacoity. When they went there they found a number of torches and other articles, on the strength of which it is said that these

people were guilty under Sections 399 and 402, I.P.C. In answer to that, the defence says first of all that this man Monohar was put up by another man Ananga who had a cause of enmity with Sabdar about a bainapatra and Monohar had been set up by Ananga to cause trouble to Sabdar. It is stated further that accused 1, 2, and 3 are brothers and along with accused 7 who is a nephew of accused 8, were living together, in any case, in that house which is the scene of this occurrence that of the accused persons five are people who ordinarily would be in that house in any case. Then it is said that accused 4, 5 and 6 were men of a place called Shedlai some 13 or 14 miles away and the accused 9 was of a place called Balina also some miles away. As regards that the defence case is that these people were casual labourers, hired labourers of a neighbour and were being allowed by Sabdar to use the outer house because the man who had employed them had no accommodation for them.

3. The learned Judge has summed up the matter at very great length and with great ability as though it was a matter of some difficulty and in the end when the jury gave their verdict he asked them some questions to find out the basis of their verdict. Before we come to that we see that the learned Judge cross-examined every one of the accused persons under Section 342, Criminal P.C., a very elaborate cross-examination putting all sorts of specific points to these accused people and the accused people were within the hearing of the jury and in that way they gave a good deal of explanation or evidence whichever it may be called with which the jury were entitled to be impressed if they thought fit. The learned Judge cross-examined them in much detail. The result may have been that the jury found that the answers given were reasonably satisfactory and sufficed to shake off the prosecution case. The jury were asked by the Judge on what basis they came to their verdict and they said that the case was concocted by Ananga and Monohar Ali. They were asked about the alibats or pieces of evidence and they said that it was possible to introduce the things into the house. As regards the men from Burichang they found that the men came as labourers to work for Jiamuddin. All I have to say on that basis is this that the matter went to the jury, they considered it and they may have taken a lucky or favourable view of these accused persons. But with evidence in this condition why this Court should be troubled with a matter like this I am entirely unable to discover. I do not see why on evidence such as in

this case the High Court should be asked to try the case all over, again. If this Court were to interfere in a case of this description it would mean that trials by jury would be rendered useless. There is no doubt that the jury were entitled to come to the verdict to which they did come. I see no reason whatever why this Court should throw aside the verdict of the jury which cannot be said to be unreasonable. In my judgment this reference is an unprofitable employment of public time. I think that the jury's verdict should be accepted and the accused should be acquitted. If they are on bail they should be discharged from their bail bonds.

Mukerji, J.

4. I entirely agree.

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