Paimullah and ors. Vs. Emperor

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Court : Kolkata

Decided On : Jun-25-1911

Reported in : 13Ind.Cas.783

Judge : Holmwood and ;N. Chatterjea, J.

Appellant : Paimullah and ors.

Respondent : Emperor

Judgement :

1. This is an appeal from the judgment and sentence of the learned officiating Sessions Judge of Dinajpur, who agreeing with both the assessors convicted the accused persons under Section 392, Indian Penal Code, and sentenced them to five years' rigorous imprisonment each.

2. It appears that certain persons entered the house of the complainant at night and having used great violence carried away his money, documents and jewelleries. The complainant told the Police that he only saw three persons. The Police after making investigation held that there had been dacoity in which at least six persons were concerned and they sent those six persons, among whom were the three present appellants, up to the Magistrate for trial preliminary to commitment under Section 395, Indian Penal Code. The learned Magistrate discharged three of these accused for want of evidence and committed the three appellants to the Sessions under Section 395, that is, for being concerned in

dacoity. The learned Sessions Judge, without assigning any reason, amended the charge to one of robbery, thereby, before hearing the evidence, changing the character of the charge altogethei; and now that we know that the presumption that. the appellants were dacoits or robbers rests solely on the finding of stolen property in places pointed out by them, it is very apparent how the appellants must have been prejudiced by this unauthorized amendment; for, granted that there were six persons engaged in this affair and that only three of them entered the house, the fact that these appellants knew where the property stolen was hidden is obviously not sufficient to convict them of being concerned in robbery. Indeed, it could net be sufficient to convict them under Section 411, for, as was held by the Allahabad Court in the case of Queen-Empress v. Gobinida 17 A. 575 where the sole evidence against the persons charged with an offence under Section 411 consisted of the fact that i he accused bad pointed out, the place where some of the stolen properties were concealed in the field of another person, this was not in itself sufficient evidence to support a conviction under Section 411, Indian Penal Code. With that ruling we are in entire agreement and particularly in the circumstances revealed in this cast; for it appears that the junior Sub-Inspector, a very energetic young man anxious to distinguish himself, had been told on the night of the 30th January by a man named Gopi, who was himself one of the persons sent up for dacoity, that the property would be found at the places apparently where the three accused pointed it out on the 30th January, and it was he who named these three accused as persons who could point out the place where the property was. That is all these persons did on the next day. The Sub-Inspector of Police has been very improperly allowed to state in his evidence that one of these persons admitted his guilt, and he makes a further statement that 'from the statement of this accused Paimullal could understand the exact nature of the offence committed by the accused.' This ought never to have been allowed to go before the assessors and must have prejudiced their minds considerably.

3. Be that as it may, there is no reason to doubt that these three appellants did know where Gopi and his accomplices, persons probably who committed the robbery, had hidden these articles. But that is not in itself sufficient to convict them even under Section 411, far less is it any evidence that they took any part in any robbery or dacoity. There being no other evidence to connect them with the crime,

unless it be the statement of Umardi who made some inquiry about the jewellery of the complainant's deceased wife shortly before the occurrence--and we do not think that this in itself would carry the case any further--it would be wholly unsafe to uphold the conviction in this case, and certainly it would not be our duty to order a re-trial to be held under Section 395, where the circumstances show that there is really no evidence that these persons committed dacoity at all.

4. As we have already pointed out they cannot be convicted under Section 411 on the evidence on the record, and the conviction and sentence passed upon them under Section 392 being sot aside they must be acquitted and released.