

Moktar Sahani Vs. the State

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Court : Kolkata

Decided On : Mar-29-1984

Reported in : 1985CriLJ90

Judge : N.G. Chaudhuri and ;Jitendra Nath Chaudhuri, JJ.

Appellant : Moktar Sahani

Respondent : The State

Judgement :

Jitendra Nath Chaudhuri, J.

1. This appeal arises out of a joint trial of four accused persons, including the present appellant, in Sessions Trial No. 1 of September 1980 held by the Second Bench, City Sessions Court, Calcutta. All the accused persons were charged under Section 394 I.P.C while one of the accused persons Ramasis Sahani was further charged under Section 397 I.P.C. The present appellant along with another accused Dilip Sarkar was convicted each under Section 392 I.P.C and sentenced to five years R. I. The other accused were acquitted of all charges.

2. The prosecution case in brief was that on the 6th April 1976 at about 8 p.m. there was a robbery in the shop of M/s. Mahadeo Prosad Munnalal at 54-B, Strand Road, Calcutta and a sum of Rs. 15,820/- was taken away by the accused. The appellant Moktar Sahani along with others was arrested on the road shortly after

the occurrence after a chase by the police shouting 'Dacoits, dacoits'. The prosecution examined 21 witnesses. The defence did not examine any witness. The defence case was that the appellant was coming after having taken a bath in the Ganges and has been mistakenly caught hold of as one of the decoits.

3. The only two witnesses who were in the shop room at the relevant time are P.Ws. 5 and 17, the bill collector-cum-darwan, and cashier of the firm respectively. They have both described how the robbery took place but none of them has identified the appellant in Court. P.W. 5 identified the appellant in the T.I. parade but not in Court. P.W. 17 did not identify the appellant either in the T.I. parade or in Court. The position, therefore, is that there is, in fact no substantive evidence of the presence of the appellant in the shop room at any point of time.

4. So far as the chase is concerned by the members of the public including a head constable and a constable of the Calcutta Police, there is a conflict in the evidence as to who caught the appellant and under what circumstances. According to P.W. 2, a head constable, it was he who apprehended the appellant while he was chasing along with another constable P.W. 10. According to P.W. 15, (who was a cashier of another shop) it was he who chased and caught hold of the appellant. Be that as it may, there is no evidence as to exactly how far from the shop in question, the appellant was caught. There is absolutely no evidence that the appellant was at any point of time seen either going into or coming out of the shop in question. Although there is some evidence that the dacoits tried to get into a taxi which was standing nearby and having failed to do so started running, there is no evidence that the appellant was one of those persons who tried to get into the taxi and thereafter had been arrested.

5. There is no evidence of recovery of any money from the appellant.

6. Neither the learned Public Prosecutor who conducted the case nor the learned trial Judge had it clarified from any of the witnesses who were in the shop room, viz., P.Ws. 5 and 17 as to whether they could recognize the appellant as one of the intruders at the occasion. This is particularly surprising as it was taken in evidence in examination-in-chief from P.W. 5 that he had identified the appellant in the Test Identification parade. No attempt was made to elicit in evidence from

P.W. 5 in Court as to whether appellant was at any point of time found inside the shop room. The learned trial Judge in his judgment seems to have proceeded on the footing that identification in the T.I parade coupled with the statements relating to the identification by P.W. 5 before the learned Magistrate holding the T. I, parade was substantive evidence regarding identification of the appellant, even though there was no such evidence from any of the witnesses of identification of any of the accused in Court. Identification in a T.I. parade can only operate on corroboration of identification, if any, in Court. In the absence of identification by P.W. 5 of the appellant in Court, the identification of P.W. 5 of the appellant in the T.I. parade is of no use and cannot be used for any corroborative purposes.

7. We have examined the entire evidence and we feel that apart from raising a suspicion that the appellant might be one of the members of the raiding party the evidence on record falls far short of proof beyond all reasonable doubts. This is particularly so since if an inference of guilt is to be drawn from the fact that the appellant was caught after a chase, the circumstantial evidence must point only to the guilt of the accused and must be wholly incompatible with his innocence. On the state of the evidence as we find it, we cannot but hold that the learned Judge has erred in concluding that the prosecution proved its case against the appellant beyond all reasonable doubt. In this view of the matter, we set aside the conviction of the appellant under Section 392 and the sentence passed on him. The appeal succeeds and is allowed. The appellant is found not guilty of the offence under Section 392 I.P.C. and is acquitted of the same. The appellant is directed to be set at liberty forth with.

N.G. Chaudhuri, J.

8. I agree.