

Robln Bapari and anr. Vs. the State

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Court : Kolkata

Decided On : Sep-16-1985

Reported in : 1986CriLJ381

Judge : N.G. Chaudhuri and; Gobinda Chandra Chatterjee, JJ.

Appellant : Robln Bapari and anr.

Respondent : The State

Judgement :

Gobinda Chandra Chatterjee, J.

1. After their conviction under Section 395 I.P.C. and the imposition of the sentence of seven years' rigorous imprisonment and a fine of Rs. 500/- each, in default, a further rigorous imprisonment of three months each, in Sessions Trial No. 3 of January, 1983 by the learned Additional Sessions Judge, 11th Court, Alipore Robin Bapari and Sambhu Biswas have jointly filed the present appeal from jail. Even at the time of the hearing of the appeal they did not or could not engage any Advocate to argue their appeal. We do not find any Advocate willing to argue the appeal on their behalf here also. Mrs. Anima Chakraborty, learned Advocate undertakes to argue the appeal of the appellants as Amicus Curiae. Mr. Chaitanya Chandra Mukherji, learned Advocate appears on behalf of the State-Respondent. The prosecution case stood as follows.

2. On 22-1-82 at about midday about seven youngmen all armed with revolvers and other deadly weapons raided the Allahabad Bank, Paikpara Branch at Talla Park Avenue. One of the miscreants forcibly entered into the room of the Manager and compelled him to open the cash enclosure, located inside the strong room. Thereafter, all the miscreants compelled the few bank employees over there to go inside the bank enclosure at the point of revolver. The miscreants then decamped with Rs. 76,432/- from the bank enclosure after putting the bank employees under lock and key. Thereafter, on receipt of a telephonic information police came to the spot and took up investigation of the case. The learned Trial court examined as many as 25 witnesses including the police officers and after hearing both sides acquitted the accused persons under Section 397 I.P.C. The accused persons, however, were convicted of the offence under Section 395 I.P.C. sentenced as indicated before.

3. Mr. Chaitanya Chandra Mukherjee, learned Advocate appearing for the State contends that several bank employees to wit, P.W. 3, Ganapati Nath Bhatia, P.W. 5, Surendra Narayan Misra, P.W. 6, Anil Kumar Das, P.W. 7, Chittaranjan Bose, P.W. 8, Jiban Kumar Sana, P.W. 9 Biswanath Seal, P.W. 14 Babul Kumar Dutta deposed about the commission of the dacoity by a group of more than seven young miscreants armed with deadly weapons such as revolvers etc. He further contends that there is nothing in the cross-examination of these witnesses to show that they had the slightest animosity against the accused persons. We have perused the evidence of these eye-witnesses and to our mind it appears that they deposed about the occurrence which occurred in their presence and there is no reason to disbelieve them. Thus the fact of dacoity in the bank premises as aforesaid is proved and established as found by the learned Trial Judge. The learned Trial Court it appears was specially impressed by the evidence of P.W. 14, Bablu Dutta from whose hands his wrist watch was robbed by the miscreants. No less impressive was the evidence of P.W. 3, the then Manager of the bank who gave a detailed account as to how the miscreants entered within the enclosure and looted the cash money from there. The evidence adduced by P.W. 7. Chittaranjan Bose is very much eloquent about the accused Sambhu Biswas. His evidence is that the miscreants 'took all of us from the Manager's room and thrust us in the cash room by force and put lock and key on the collapsible gate installed

there.' It transpires further from his evidence that it was Sambhu who was standing in front of the collapsible gate. It was Sambhu, again, who actually locked them inside the enclosure. No wonder that the witness identified the accused persons, specially, Sambhu, correctly, not only before the Magistrate (P.W. 17) holding the T. L Parade but also before the learned Additional Sessions Judge. The date of occurrence we have already seen was 22-1-82. Sambhu, the accused was thereafter arrested and was put up for T.I. Parade by Sri D.C.De(P.W. 17) on 24-3-82. In the T.I. parade he was identified by P.Ws. Ganapati Nath Bhatia, Biswanath Seal Jiban Kumar Saha, Chittaranjan Bose, Anil Kumar Das and some others. So Sambhu's participation in the dacoity and identification thereafter in the T. 1. Parade cannot be questioned and Mrs. Chakraborty, the learned Amicus Curiae does not seriously challenge this part of the judgment under appeal. We have, therefore, no reason to interfere with the judgment of conviction and sentence in so far as Sambhu is concerned.

4. We have our difficulties in affirming the judgment of conviction and sentence in so far as Robin Bapari, the appellant is concerned He too was put up in T.I. Parade on 24-3-82 before the learned Magistrate already named and was identified by witnesses earlier mentioned and some others but we cannot straightway affirm. his conviction and imposition of sentence on him. From his examination under Section 313 Cr. P.C. on 26th April, 1983 by the learned Trial court it transpires that he discloses his age on that date to be 18 years. Obviously, he was a child, that is to say, a man below 18 years on the date of occurrence, namely, on 22-1-82. Reference in this connection is invited to the definition of a child as given in Section 2(d) of the West Bengal Children Act, 1959 which defines as follows. 'Child' means a person who has not attained the age of eighteen years; 'It has been held by a Full Bench decision of this Court in the case of Dilip Saha v. State of West Bengal reported in 1978 Cal HN 737 : 1979 Cri LJ 88 that for determining whether an accused is a child or not., the date of commission of offence is relevant. Following the said decision we have no hesitation to conclude that Robin Bapari was a child on the date of commission of the offence. The consequences that follow are to be considered taking into view Section 5 of the Cr. P.C. 1973 read with Section 5 of the Children Act, 1959. Reading the two sections together we cannot avoid the conclusion that a Juvenile Court had the exclusive

jurisdiction to try Robin Bapari The trial of Robin Bapari along with the adult accused Sambhu Biswas was violative of the mandatory provision of Section 28 of the West Bengal Children Act, 1959. The trial of Robin Bapari, therefore, was absolutely illegal. Following the Supreme Court decision in Gopi Nath Ghosh v. State of West Bengal reported in : 1984 CriLJ168 we propose to send back the case of Robin Bapari to the committing Magistrate who will send him to the Juvenile Court established for the locality or to the Sessions Judge who will be exercising the power as a Juvenile Court under Section 5 of the West Bengal Children Act, 1959 as the case may be for enquiry into Robin's age under Section 40 of the West Bengal Children Act and for consideration of the question of releasing him on bail under Section 22 of the aforesaid Act. Needless to mention, that the court competent to try Robin as a Juvenile delinquent would follow the procedure prescribed in Section 25 of the West Bengal Children Act, 1959.

5. In the result, the appeal is allowed in part. The judgment of conviction and sentence in so far as Sambhu Biswas is concerned is affirmed both in respect of his conviction under Section 395 I.P.C. and imposition of sentence of seven years' rigorous imprisonment and payment of fine of Rs. 500/- in default, three months' rigorous imprisonment. This sentence is subject to set off under Section 428 of Cr. P.C. to which he may be found entitled.

6. In so far as Robin Bapari is concerned the judgment of conviction and sentence passed against Robin Bapari the said judgment is set aside. The learned Committing Magistrate will send the case of Robin Bapari to the appropriate Juvenile Court for dealing with Robin in the light of Sections 40, 25 and 22 of the West Bengal Children Act, 1959.

7. A copy of this judgment may be communicated to the learned Committing Magistrate expeditiously so that he can take necessary actions without unnecessary delay.

8. If, however, the Juvenile Court after enquiry concludes that Robin Bapari was not a child on the date of commission of the offence the judgment of conviction and sentence as passed by the learned Additional Sessions Judge will bind him and he will serve out the sentence.

N.G. Chaudhuri, J.

9. I agree.

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