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Kalia and ors. Vs. Emperor

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Court : Kolkata

Decided On : Feb-18-1924

Reported in : AIR1925Cal959

Appellant : Kalia and ors.

Respondent : Emperor

Judgement :

1. The five appellants before us were tried before a jury of five persons and they were convicted of offences under the provisions of Sections 395 and 397 of the Indian Penal Code. Two jurors were in favour of their acquittal and three jurors were in favour of their conviction and the learned Officiating Additional Sessions Judge agreed with the verdict of the majority of the jury and sentenced the first three appellants to five years' rigorous imprisonment under Section 395 and the other two appellants to seven years under Section 397. Now the charge has been attacked in seven particulars. First of all, it is said that the learned Judge was wrong in referring the Jury, to Ex. 3 and admitting it in evidence because it is urged before us that it is 'inadmissible In evidence under the provisions of Section 172 of the Cr. P.C., and it is said that it could only be used for the purpose of contradicting the Police Officer who wrote the diary and for no other purpose what soever, The second point urged is that Ex. 4 which is a list of the property stolen at the dacoity and which was given by Waheb Ali to the Police Officer was not admissible in evidence having regard to the provisions of Section 162 of the Cr. P.C. and having regard to the fact that the list was given in the course of the

Investigation. The third point urged is with regard to the admission of Ex. 2. Exhibit 2 was a list, a translation of which is before us which contains the names of seven persons and also in writing ' 1,500. ' It is said this was not admissible in evidence and that oral evidence for the purpose of explaining it should not have been allowed to be given and it is suggested that the trial has been vitiated by reason of the admission of Ex. 2. The fourth point urged is with regard to a map Ex, 5 which was prepared by the Sub-Inspector, prosecution witness No. 15. The specific objection raised to Ex. 5 is that it Contains on the face of it a statement which must have been obtained by the Sub-Inspector from certain persons and it is said that Ex. 5 is not admissible in evidence for this reason. The fifth point urged is with regard to paras. 2 to 7 of the charge of the learned Judge and it is said that if these paragraphs are read they are in the nature of statements of facts representing the views of the Judge him-self and these paargraphs are objected to because it is said that the learned Judge has imposed his own views of the facts upon the jury and has not allowed them to form their own views upon the facts and it is said that he has never told the jury in the whole course of his charge that questions of fact were for them and for them alone. The sixth point urged is that the charge is so involved as to amount to a mis-direction in itself. The seventh point is with regard to some portions of the evidence which, it is said, were not placed before the jury at all or placed before the jury In such a way as to have prejudiced the accused But the real gravamen of the attack made upon the charge is with regard to the admission of Exs. 2, 3, 4 and 5. I will take the points in order.

2. So far as Ex. 3 is concerned we have seen the document. It is a personal diary and it appears that the officer who made entries did not start investigating and that he never investigated and it seems to us for this reason that it does not fall within the provisions of Section 172 and that the point urged against the charge on this head falls for this reason.

3. Then so far as Ex. 4 is concerned this is merely, as I have already stated, a list of stolen property which was given by Waheb Ali in the course of the investigation. The learned Judge in his charge to the jury refers to Ex. 4 in these terms 'Waheb also stated to the daroga that articles were taken away by the dacoits and the daroga wrote out the same. ' Now we agree with the criticism that has been

directed against the admission of Ex. 4. It was given, as appears, in the course of investigation and it should not have been dealt with as it was by the learned Judge or admitted in evidence. But after all, the mere admission of this document is not in itself sufficient. We must be satisfied that the appellants have been prejudiced by the fact that this document) was admitted. After all it is only a list of the property stolen at the time of the dacoity. I can well imagine that if it had purported to show this or that article found in the house of one or other of the accused they might have well been prejudiced by the admission of this document in evidence in the case. But this is not so. It is not seriously disputed that on the night of the occurrence in question the dacoity in fact took place at Waheb Ali's house and that certain articles disappeared in the course of that dacoity and we are not prepared to say that the accused have been so prejudiced by the admission of this document that we should set aside the conviction on this ground and direct the appellants to be re-tried.

4. Then we come to Exhibit 2. This, as we have already stated, is the list containing the names of seven persons and the figures already mentioned. It appears that it was written by one Sonatan who was called as a witness in the case and it appears to have been written under the following circumstances. A telegram was despatched at about one o'clock of the night of the occurrence to a Police Station at Bramanbaria containing no details but merely stating that a dacoity had taken place and that certain persons were injured. As a result of this telegram an Investigating Police Officer was sent from Brahmanbaria but ha failed to arrive by the first train and a chowkidar was despatched by train to Brahmanbaria. It appears that the chowkidar asked for a list of any person, who might be suggested to have been implicated in the dacoity and that accordingly this document, Exhibit 2, was given to him. The list was given, I understand, by Waheb Ali, and as he was unable to write, or for some other reason, it was written out by Sonatan. The chowkidar started at 8 A. M. taking this list with him and delivered it at the Police Station at Brahmanbaria I should say that a doubt has been thrown on the authenticity of this list having regard to the paper upon which it was written which is a piece of paper used at dispensaries. How it seems to us that this document or rather the admission of this document can be supported on the two grounds urged by the learned Counsel who appeared for the Grown, the

Deputy Legal Remembrancer. It was given some 8 hours after the occurrence. The only information that could have then been given was the telegram to which I have already referred. No investigation had been started although it is true, that the Police Officer had left Brahmanbaria at the time when this list was on its way there. It seems to us that in the circumstances it is possible to say that Exhibit 2 was really the first information or some part thereof; for it is somewhat difficult to treat the telegram by itself as the first information. But even if this is not so we think that it would be admissible in evidence to corroborate the witness Sonatan whose evidence was challenged, and it was upon this challenge that Exhibit 2 was produced. Accordingly, we are not prepared to say that the reference of the learned Judge to Exhibit 2 was wrong or has vitiated his charge.

5. Then comes the fourth point, Exhibit 5. It is true that the map does contain upon it certain things which must have been supplied to the Police Officer by some person, for instance there appear on the map against the letter 'S' these words: 'This is the position of the witness Daulat' and so on. Now strictly speaking the map should not have been admitted in this form unless there had been the evidence of Daulat as to what he said to the officer and the evidence of the Police Officer as to what Daulat told him which would have made it evidence. But after all, the evidence of Daulat All makes it clear that he has explained the position of his house and the position he occupied on the night of the occurrence and during the progress of the dacoity. It, therefore, appears that there is no substance in the criticism that has been directed against the map, and accordingly we are not prepared to say that there has been any prejudice to the accused by the admission of Exhibit 5 containing the notes which it does upon it.

6. As to the fifth point we have read the paragraphs which are complained of, paras. 2 to 7. After all, it is only the heads of the charge that are before us and reading these paragraphs we are not prepared to say that the Judge in charging the Jury did not lay before them the facts as represented by the prosecution witnesses, leaving it to the Jury to accept or reject the facts as so stated. There is nothing, therefore, in this point.

7. As to the sixth point this was never developed and, therefore, it calls for no notice.

8. As to the seventh point, criticisms were directed against certain portions of the evidence and the manner in which that evidence was placed before the Jury. There seems no substance in any of them and it is unnecessary to deal with them in detail. The real point urged against the charge was with regard to the admission of the four documents to which we have already referred, and if the criticisms on those grounds fail it seems to us that the appeal cannot succeed.

9. For the reasons already stated, we dismiss the appeal.

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