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Court : Kolkata

Decided On : Aug-07-1925

Reported in : AIR1926Cal925,94Ind.Cas.361

Judge : Suhrawardy and ;Panton, JJ.

Appellant : Emperor

Respondent : Ekabbor and ors.

Judgement :

1. This is a Reference under Section 307, Cr.P.C. by the Assistant Sessions Judge of Pabna who was unable to agree with the unanimous verdict of the Jury-finding the accused Nos. 2 to 6 guilty under Section 395, Indian Penal Code. With regard to accused No. 1 who was also found guilty under Section 395, the learned Judge has accepted the verdict of the Jury and sentenced him to transportation for life. In respect of the other accused persons the learned Assistant Sessions Judge has made no definite recommendation in referring the case to this Court under Section 307, Cr. P.C. but it seems from a perusal of this letter of reference that he is of opinion that these five accused should be acquitted.

2. All the six accused were charged under Sections 395, 412 and 120-B, Indian Penal Code. The facts which gave rise to the prosecution are that there were two dacoities committed on the 10th June 1923 in the houses of two persons Prasunno Kumar Guha and Girish Chandra Ghose. There were several other

dacoities committed--one on the 21st June and another on the 18th July 1923. But in the present case the accused were charged with committing dacoities on the 10th June and with being found in possession of stated properties which were the subject of those dacoities. On the 14th August 1923 the Police which was deputed to patrol the river and watch the boats passing by, noted in the early hours of the morning a boat going down the stream. It was challenged and the boatmen gave an answer which did not satisfy the Police. They were asked to stop but they did not pay heed to it and adding more force dashed down the stream as quickly as possible. The Police gave chase--the Sub-Inspector following the boat in his boat and the several other Policemen pursuing the fugitives along the bank of the river. These men as they were running along raised a hue and cry and attracted a large number of villagers. After ten miles one of the villagers managed to reach the accused's boat and got into it but was thrown down into the river. One of the villagers then fired and the helmsman having left his charge the boat was secured. All the accused, including the present accused persons gave fight and it was after a great deal of struggle that the men on the boat were secured one of whom subsequently died of the wound received in the affray. The boat was searched and a search list was prepared of the articles found on the boat. The persons who had complained of dacoities taking place in their houses were sent for and these articles were identified by them. A large number of articles (Exs. 1-35) were identified by Prasunno Kumar Guha and Girish Chandra Ghose as belonging to them and evidence was given by the prosecution to prove that these articles belonged to these persons and were taken away by the dacoits on the 18th June. On this evidence Jury brought in a verdict of guilty under Section 395 against all the accused persons and acquitted them under the other charges, namely, under Sections 412 and 120-B, Indian Penal Code. The learned Assistant Sessions Judge has been unable to accept the verdict of the Jury on the ground that there is no evidence that these persons took part in the dacoities of the 10th June and he has, therefore, asked us to set aside the verdict of the Jury convicting them under Section 395, Indian Penal Code. We have to see after giving due weight to the opinion of the Judge if the verdict of the Jury is so unreasonable that it ought not to be upheld. The evidence consists of the identification of the articles recovered from the boat and the confessions of accused No. 1, Waris and accused No. 6,

Baram alias Badulla Bepari. As for the confession of Baram it is not very clear and it is difficult to convict him upon it of the dacoity of the 10th June. Waris in his confession implicates not only himself but accused Nos. 3 and 4, Afza-ud-din Sheikh and Ayezud-din Sheikh as being members of the party going to commit the two dacoities of the 10th June. As far as these two accused are concerned, we have the confession of Waris which is corroborated by the fact that the articles which were taken possession of by the dacoits were found in the boat in which these two accused were. Apart from this evidence as against these two accused persons, we have considered the whole evidence in the case against all the five accused whose case has been referred to us by the Judge. The evidence against them principally consists of the finding of these articles in the boat which they were in possession of, and secondly, the fight they set up and the desperate attempt they made to escape when challenged by the Police. This conduct of the accused might have some bearing upon the knowledge of the accused as to the nature of the articles found in their possession. Under Section 114 of the Evidence Act (Illustration A) if a man is found in possession of stolen goods soon after theft he is either a thief or a Receiver of goods knowing them to be stolen, unless he can account for his possession. In the present case the accused have given no sufficient explanation of their possession of those goods. In fact they denied it. It has, therefore, to be considered whether they were found in possession of the goods so soon after the dacoity as to raise the presumption that they were either thieves or receivers of stolen property. The learned Judge in his letter of reference has expressed his opinion that the things having been discovered two months from the date of the dacoities, their possession should not be considered to be recent. No fixed time-limit can be laid down to determine whether possession of articles is recent or otherwise. But every case must be judged on its own facts. If a few stolen articles were found in possession of a person under circumstances which may give rise to the probability of his coming by them honestly some time after the theft the presumption under the law might not arise against him. But in the present case the articles that were recovered from the boat were articles which were the loot of several dacoities the last of which took place on the 18th July 1923. It may not be wrong, therefore, to presume that these persons were out on the errand of committing dacoities all over the place and were still engaged in their

occupation when they were arrested. In these circumstances, therefore, we cannot say that the Jury was wrong in holding that the possession of the accused was so recent as to raise the presumption that they were the thieves. There is enough evidence, therefore, to support the verdict of the Jury. We are accordingly of opinion that the verdict of the Jury should be upheld and the accused should be convicted under Section 393, Indian Penal Code. It is not necessary to consider the verdict of the Jury under Section 412, Indian Penal Code, as they have acquitted the accused of that charge and that verdict has been accepted by the Judge. But we should like to point out that under Section 307, Clause (2) the Judge in referring a case to this Court should not enter his finding on any of the charges but should refer the entire case for the consideration of this Court.

3. The result is that the Reference is rejected, the verdict of the Jury upheld convicting the accused under Section 395 and each of them sentenced to four years' rigorous imprisonment. If they are on bail they must surrender and serve out their sentence.

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