

Jai Dayal and anr. Vs. State

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Court : Allahabad

Decided On : Sep-04-1953

Reported in : AIR1954All201

Judge : Randhir Singh, J.

Acts : [Code of Criminal Procedure \(CrPC\), 1898](#) - Sections 233, 234 and 235

Appeal No. : Criminal Appeal No. 118 of 1953

Appellant : Jai Dayal and anr.

Respondent : State

Advocate for Def. : M.L. Trivedi, Adv. for Addl. Govt. Adv.

Advocate for Pet/Ap. : A.N. Mulla, Adv.

Judgement :

Randhir Singh, J.

1. This appeal and the four connected appeals Nos. 120, 121, 122 and 123 have been heard together as they arise out of the same judgment. The appellants in Appeal No. 118 are represented by counsel while the remaining four appeals are jail appeals.

2. It appears that 15 or 16 persons collected together on the Bangarmau Mallawan Road on 28-8-1951, at about 7 p. m. There was a volley-ball match at Mallawan and students who had gone to attend the match were returning after the match in the evening. Radha Ballabh passed the place where these persons sat at about 7 p. m. and he was attacked and his property was looted. He was then made to sit at a distance. Some ten minutes after, another batch of two students happened to pass and they were also likewise waylaid and looted. Some fifteen minutes after this second occurrence a third batch of students consisting of four persons, Mahendra Pratap, Shushil Kumar, Brijendra Kumar and Eirendra Singh passed on the way. These persons were also attacked and looted.

An alarm was then raised and the miscreants decamped. Reports were lodged by some of these students and the police took up the investigation and finally sent up the six appellants for trial under Section 395, Penal Code. Some stolen property was also recovered from the possession of some of the appellants and they were also tried under Section 412 of the Indian Penal Code. The case was ultimately committed to the Court of Session and the Additional Sessions Judge found all of them guilty and sentenced them to various terms of imprisonment. They have now come up in appeal.

3. The first point which has been canvassed on behalf of the appellants is that the trial of all the appellants for the three offences alleged to have been committed was illegal and in support of this contention reliance has been placed on the provisions of Section 233, Criminal P. C. which enjoins that there shall be a separate charge and a separate trial for each separate offence,

4. The learned counsel for the appellants has tried to show that the case as tried could not be covered by the various exceptions contained in Ss. 234 to 239, Criminal P. C. inasmuch as the three offences alleged to have been committed by the appellants were not part of the same transaction, and even if they were separate offences, a composite charge was not proper and the appellants were prejudiced in their trial on account of this impropriety in the framing of the charge.

The learned counsel has cited a recent ruling of this Court in which dacoities committed at eight different houses in the course of a single night by the same set of persons were not held to be part of the same transaction, vide --' Raj Narain v. The State', AIR 1953 All 448 (A).

In the present case the three sets of persons who were looted were looted at short intervals, and, according to the prosecution, by the same set of persons. There was nothing in common in the three occurrences except in so far that the culprits were actuated by a motive for loot or robbery. That by itself, however, cannot be any criterion for deciding whether certain acts do or do not make a single transaction.

All offences which constitute the cause or effect, or which are the principal or subsidiary of the main act, may be taken to be parts of the same transaction, but similar offences even though committed by the same set of persons and at short intervals or within close proximity of time will not, however, constitute a single transaction. In the present case the three offences committed on three different sets of persons could not, therefore, be said to be part of the same transaction. They are evidently different transactions.

5. Section 234, Criminal P. C., however, permits one trial of three different offences provided they were committed within a space of 12 months and by the same persons. In the present case no doubt there were no more than three offences and were all committed within a space of 12 months and there could, therefore, be a single trial for all these offences.

The learned Magistrate, however, framed one single charge in respect of all the different occurrences or offences and the appellants were tried on this charge in the Court of the Additional Sessions Judge. It has been argued on behalf of the appellants that the framing of a composite charge in respect of all the three offences greatly prejudiced the case of the appellants inasmuch as there were a number of persons who were prosecuted for these offences and evidence of identification was also produced. If the charges had been separate, the trying Judge could have been made to focus his attention on the evidence in respect of each of the three separate charges while deciding whether that particular charge had or had not been established against the appellants. This could not, however, be done if there was a composite charge in respect of all the three separate offences.

It appears to me that there is some force in the contention raised by the learned counsel for the appellants and it seems that the appellants' case may have been

prejudiced on account of the composite charge framed by the learned Sessions Judge.

6. In view of what I have said above, it is not necessary to go into the merits of the case. The only course open to me is to set aside the conviction and sentences and order a retrial.

7. These appeals are, therefore, allowed and the conviction and sentences of the appellants are set aside. The case shall go back to the Court below with the direction that separate charges should be framed in respect of all the three separate offences and the case be tried according to law.

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