

**Haris Chandra and anr. Vs. Emperor**

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**Court :** Allahabad

**Decided On :** Sep-27-1932

**Reported in :** AIR1933All94

**Appellant :** Haris Chandra and anr.

**Respondent :** Emperor

**Judgement :**

Pullan, J.

1. This is an appeal on behalf of two persons who were convicted by a jury of an offence under Section 395, I.P.C. They have each of them been sentenced to five years rigorous imprisonment. The first ground of appeal is 'that the jury's decision being against the rules and principles explained by the Judge in the charge, the learned Judge ought to have referred the case under Section 307, Criminal P.C.' and the second is 'that either the Judge's charge to the jury is wrong and amounts to misdirection or the jury's verdict is perverse and against law.' These grounds of appeal are based upon certain passages in the Judge's charge to the jury. This is one of those cases in which the basis of the prosecution evidence is the statement of an approver, and the Judge pointed out that an approver's statement required corroboration and that it would be improper to convict on the uncorroborated evidence of the approver. He went on to develop this by saying that the corroborative evidence should be sufficient in quantity and of a reliable character and he stated correctly that the law has not fixed the quantity of evidence necessary to corroborate the testimony of an approver. He then went on to express his own personal view in the following terms:

I should like to lay down as a safe rule for your guidance that you should not hold any accused guilty unless you find that besides named or indentified by the approver Mathura, he is also identified by at least two other witnesses.

2. The Judge does not say that this is the law and he has not directed the jury that it would be illegal for them to convict any person who has not been identified by two witnesses in addition to the approver's statement. It was for the jury either to accept the personal opinion of the Judge as to the necessary quantum of evidence or to reject it. In the case of one of these appellants Gajadhar, the jury did not accept the Judge's view, for this man was named by the approver and identified in jail by one witness only. The Judge accepted the verdict and convicted this man Gajadhar along with the others. I cannot accept the contention of the learned Counsel that because the jury did not accept the Judge's view as to the requisite amount of evidence which could be held to corroborate the statement of an approver, it was his duty to refuse to accept the verdict and to refer the matter to this Court. On the contrary, the verdict of the

jury was in accordance with law and based on the evidence which had been placed before the jury by the Judge himself and he could only refer the matter to this Court if he held that the verdict was a perverse verdict and that on the evidence the man was shown to be not guilty. It was not the duty of the Judge to refer to this Court a case where the jury have found a man guilty on admissible evidence and evidence which in the eyes of the law is sufficient to justify a conviction.

3. There is even less to be said about: the other appellant Harish Chandra alias Babu who was identified in jail by numerous witnesses and made a sort of half-hearted confession himself. Clearly, if the jury believed that evidence, they were right in convicting this man and there is nothing in the Judge's summing up to show that he directed them otherwise, and as in the case of Gajadhar he accepted, the verdict and sentenced this man along with the others. As to the sentence, the Judge has pointed out that this was a dacoit in which great brutality was perpetrated on an old man and a woman and that the old man was stabbed, with a knife and his arm was broken, and the woman was wounded in several places with a spear. In my opinion, the sentence far from being excessive, is barely adequate. I accordingly dismiss these appeals and uphold the conviction and sentences.

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