Sarup Ali and anr. Vs. Emperor

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Court : Kolkata

Decided On : Jul-20-1934

Reported in : AIR1934Cal744,152Ind.Cas.661

Appellant : Sarup Ali and anr.

Respondent : Emperor

Judgement :

1. The appellants were tried before the learned Assistant Sessions Judge of Tippera, and a jury, on the charge of having committed an offence Under Section 395, I.P.C. On the, unanimous verdict of the jury, they were convicted and sentenced by the Judge to rigorous imprisonment for six years each.

2. The only question that required consideration in the case before us was whether the verdict of the jury could be taken to be a proper verdict, in view of an apparent irregularity in the procedure allowed to be adopted by the; Judge in the matter of the jurors coming to their conclusion on the most material question in the case: the question of identification or recognition of the appellants as members of the party of dacoits who participated in a dacoity in the house of one Warish Bepari. On the question of recognition of the dacoits, the Judge charged the jury in the following manner, in which statement by the Judge reference was made to the method allowed to be adopted by them in the matter of forming their conclasion:

You are required next to answer another and perhaps more important question in this case, whether the accused persons before, you were some of the raiders who committed the dacoity or robbery. P.W. 1, Warish and P.W. 2, Sonabhan have told you they recognized the accused Pokan and, the accused Sarup Ali as having entered their ghar and taken away their money. In testing their tiestimony you will first consider whether they had sufficient opportunity for recognizing the raiders who had entered their ghar. P.W. 1 Warish told you the size of his ghar to be 15x8 cubits and that it had turja walls (woven split bamboo) and C.I. roof, with a door on the west side and another on the south side, being the east bhiti ghar of his bari. He has further told you he was sitting on his bed which was about 3 cubits to the, east from the western door of his ghar and that he found the two accused persons on his west side though inside the ghar and that each of them had an electric torch in hand which was flashed and directed in different directions by them. You will consider at what close quarters the miscreants were from the complainant P.W. 1 and his wife who was standing behind him; if you believe them and particularly at the time when one of them had bent down to throw the katha and the other to take, the jali. P.W. 2, Sonabhan tells you she recognized the miscreants when the focussed beams of light from the torches were directed towards her husband. You cannot certainly expect that the miscreants would be directing the beams towards their own faces for making

themselves easily recognized and P.W. 1 and P.W. 2 also do not say they had recognized with the focussed beams falling on the faces of the culprits. But they have told you the accused persons were known to them for a long time before the occurrence. Hence the question before you is whether with the diffused light in the ghar obtained from the two electric torches was sufficient for clear recognition of two known faces, if, of course, you believe there were such electric torches flashed in the ghar and the accused persons were known to P.W. 1 and P. W. 2. The learned Public Prosecutor told you, with such light it would be very easy to recognize the known faces of the accused who were at such close quarters, while on the other band the learned pleader for the defence told you it was next to impossible to so recognize. 'Under the circumstances you were quite right when you told me yesterday you would like to make an experiment yourselves on this matter as you had no previous experience on such lights. Bat I had directed you that you must find out a ghar with tarja walls of the size of 15x8 cubits or near about it and use only two ordinary electric torches of medium size for the purpose, being careful that no outside light enters the ghar. I had further told you that the recognition was not to be made with the focussed beams of light but with only the diffused light in the ghar. I have been told by you, you had made such an experiment in accordance with the above directions. I shall therefore ask you not to be guided by the opinion or experience of either pleader but by the past knowledge and experience you have on this matter. You must not forget you are the sole judges of fact. If from your own experience and knowledge you are not satisfied that the recognition was possible or easy, you should have no hesitation in acquitting the accused persons. But if you have no reasonable doubt as to the possibility of recognition, you will say there was an opportunity for recognition.

3. The point raised before us in support of the appeal was that the Judge should rot have allowed the jurors to make an experiment referred to above, and should have on the other hand given a direction to the effect that on consideration of the evidence in the case, if there was any reasonable doubt in regard to the fact of recognition, the accused were entitled to the benefit of the same. In our judgment the contention thus raised has to be given effect to inasmuch as we cannot but hold that there was a great irregularity involved in the Judge's allowing the jury to make an experiment in the absence of the accused, by reason of which the jury ultimately brought in their verdict, a verdict which the jurors were not apparently in a position to deliver before the experiment mentioned in the Judge's charge to the jury was allowed to be made.

4. The verdict of the jury must, in the circumstances referred to above, be considered to be not a proper verdict against the appellants before us. The verdict of the jury has accordingly to be set aside. The result of the verdict of the jury against the appellants being set aside does not necessarily end in their acquittal, inasmuch as on the materials before us we are not in a position to hold that there was no case to go to the jury. The verdict of the jury and with it the conviction of the appellants and the sentences passed on them by the Assistant Sessions Judge, on 25th January 1934, are set aside; and a retrial of the appellants before the Court of Session and jury is directed, on the charge for which they were previously tried. It would be open to the Court of Session to consider whether the appellants should not be allowed bail, pending their retrial as directed before us, on the application being made before that Court.