

## **Raj Narain And Ors. vs The State on 9 September, 1952**

**Equivalent citations: AIR1953ALL448, AIR 1953 ALLAHABAD 448**

### **JUDGMENT**

Brij Mohan Lall, J.

1. As many as sixteen persons were put on their trial on a charge of dacoity before the learned Sessions Judge of Rae Bareilly. The trial resulted in the acquittal of nine. The remaining seven have preferred appeals to this Court. Every one of them has been sentenced to undergo five years' rigorous imprisonment. Three of the appellants, viz., Raj Narain, Durga Din and Gaya Singh are represented by Mr. Chatterji, Bhagwan is re-presented by Mr. Kalbe Mustafa and the remaining three have preferred jail appeals.

2. The prosecution case is that all the seven appellants together with their nine companions, who have been acquitted, committed no less than eight dacoities in the night between 18/19-12-1950, in village Pure Sheo Ghulam, which is a hamlet of village Dubhan, within police circle Salon in the District of Rae Bareilly. These dacoities were committed in eight different houses situate in the aforesaid hamlet.

3. Mr. Chatterji has placed in the forefront of his arguments the contention that there was a serious misjoinder of charges in this trial and that his clients were greatly prejudiced by the admission of evidence relating to no less than eight different dacoities. He contends that on this ground alone the convictions cannot stand.

4. Section 233, Cr. P. C. lays down that for every distinct offence of which any person is accused there shall be a separate charge, and every such charge shall be tried separately. Exceptions to this general rule are provided by Sections 234, 235, 236 and 239, Cr. P. C. Unless the case is covered by any one of these four sections, there should be a separate trial for each distinct offence.

5. The learned counsel holding the brief of the learned Government Advocate has contended that the eight dacoities which formed the subject matter of prosecution in the present case were committed in the course of the same transaction. He, therefore, wishes to bring his case under Sections 239 and 235 Cr. P. C.

6. In order to make these sections applicable, it has to be established that the dacoities were committed in the course of the same transaction. The prosecution has not been able to establish any connection between the different dacoities. The only thing common about them is that the persons who committed them are the same and that the houses are situate in the particular hamlet. This is not sufficient to make the dacoities a part of the same transaction. If a person or body of persons

commits a number of similar offences within a certain area, the offences do not necessarily form part of the same transaction, unless some continuity of purpose is established between them. In the case of -- 'V. Gunno v. Emperor', AIR 1934 Oudh 325 (A) six dacoities were committed in the same night. It was held that the mere fact that they were committed in the same night and the persons charged were the same, the dacoities did not become part of the same transaction. Similarly in an unre-ported decision Criminal Revn. No, 103 of 1949 D/- 18-10-1949 (All) (B) Sapru J., remarked as follows :

"There is no force in the argument that as the offences were committed on one and the same night they must be deemed to form part of a series of acts so connected as to form the same transaction."

With these remarks I respectfully agree. I am satisfied that the dacoities were not committed in the course of the same transaction.

Therefore Sections 239 and 235 Cr. P. C. have no application.

7. It is not suggested that Section 236 can possibly apply to present case. Section 234 permits the joining together of three charges of offences of the same kind committed within a period of twelve months. In the present case, the number exceeds three. Therefore there was a clear breach of the requirements of law.

8. The defect of mis-joinder was not a mere irregularity such as could be condoned under Section 537, Cr. P. C. It was a clear case of illegality. It vitiated the whole trial. I have no doubt that the appellants were seriously prejudiced because evidence relating to all the eight dacoities was brought on the record in the same trial.

9. The appeal is, therefore, allowed, the convictions and sentences are set aside and the case is remanded to the trial Court, with directions that a 'de novo' trial shall take place in accordance with law.