Chunnoo And Ors. vs State on 2 August, 1954

Equivalent citations: 1954CRILJ1762, AIR 1954 ALLAHABAD 795

JUDGMENT

Kidwai, J.

1. On the night between the 10th and the 11th October 1950, the three houses of Umrao Gaderia, Chutta Ahir and Tulsi Teli, facing each other in village Bakania, were looted by dacoits said to number between 30 and 40. Param Sukh (P. W. 1), a neighbour, was woken up by the noise of the dacoity and went to Ninisar, where the police was posted in connection with Mela duty, for help. At the temple of Lalta Debi he met Head Constable Hem Singh and some Constables including P. W. 4, Ram Saran and told them about the dacoity. The Head Constable directed him to the Station Officer Misrikh, Sub-Inspector Ram Karan Singh (P. W. 38) who was staying in a Dharamshala nearby. The Sub-Inspector recorded a first information report dictated by Param Sukh, (Ex. 12), and proceeded to the spot immediately with the police Constables armed with muskets but they adopted different routes so as to reach the spot from two different directions.

2. The dacoity was still in progress. There was an exchange of fire between the dacoits and the police party. Most of the dacoits managed to escape with much of the stolen property but Chunnu was beaten down with lathis and arrested on the spot with some stolen property. Ram Dayal who hid a pistol, Ram Lal and Badlu received gunshot injuries and were also arrested immediately: Ram Dayal and Ram Lal being arrested at the scene of the dacoity while Badlu who had managed to screep away was captured in a Bajra field.

3. Various other persons were arrested on various dates and all, except the four persons arrested on the spot, were put up for identification on the 11th of November and the 13th and 21st December, 1950. After the completion of investigations the persons who had been identified and the four persons caught on the spot were prosecuted and Badlu, Chunnu, Ram Dayal, Ram Lal , Faqirey, Chaudhi, Bhikari, Bindra, Jia Lal , Tilak, Gulzari, Puttu, Sukha, Maiku and Dularey were committed to stand their trial in the Court of Session at Sitapur, while Ram Singh and Lachhman were discharged.

4. In the Sessions Court Chunnu pleaded that he was not arrested on the spot but at the mela. Ram Dayal, Ram Lal and Badlu pleaded that they were together proceeding about their lawful business and were implicated because of police enmity. Puttu, Faqirey, Bindra, Bhikari, Maiku, Jia Lal and Chaudhi also pleaded enmity with the police. Sukha pleaded enmity with the village Chaukidar. Gulzari and Tilak pleaded enmity with local zamindars. Dularey pleaded enmity between his Samdhi and the witnesses.

5. The prosecution produced 40 witnesses. Of these only P. W. 1 Param Sukh, P. W. 2 Dalla son of Chutta, P. W. 3 Shrimati Mohana, daughter-in-law of Umrao, P. W. 4 Constable Ram Saran, P. W. 5 Shrimati Janka, wife of Umrao, P. W. 6 Umrao himself, P. W. 7 Kishan, son of Chutta, P. Ws. 8, 12, 19, 20, 21, 22, 23, 24 Mangrey, Pragi, Simma, Pitambar, Bishnu, Shankar, Natha, and Jhalloo neighbours, P. Ws. 9 and 11 Chiddu and Misri, sons of Umrao, P. W. 10 Jai Rani, daughter of Tulsi, P. W. 13 Narain brother of Tulsi, P. W. 34 Tulsi and P. W. 38 Sub-Inspector Ram Karan Singh deposed to the factum of the dacoity and the participation of the accused in it. The rest are more or less formal witnesses.

6. The learned Additional Sessions Judge con-victed all the accused before him, except Gulzari, against whom he did not consider that there was sufficient evidence. All the persons convicted have appealed, but only Chunnu, Ram Dayal, Badlu Tilak and Jia Lal appellants in Appeal Nos. 76 and 98 of 1952 are represented by counsel; the others have filed jail appeals. Their appeals are Nos. 181 to 189 of 1952.

7. Ram Dayal Was also convicted in a separate trial under Section 19(f), Arms Act. He has appealed in that case also and his appeal is No. 77 of 1952.

8. Manna was tried separately in respect of the same case and he has also been convicted. He has filed an appeal through counsel which is No. 427 of 1952.

9. The appeals came up for hearing before one of us but at that hearing a point of law was taken as to the validity of the trial by the Sessions Judge since it was contended that there was not one dacoity, but three-the dacoity in each house being treated as a separate offence-that separate and distinct charges should have been framed and that they should have been tried separately by reason of Section 233, Cr. P. C. It was further contended that, if by reason of Section 239(c) read with Section 234, Cr. P. C., the three offences could be tried together, separate charges should, in any case, have been framed. Failure to do this was at least an irregularity and, since it has caused prejudice to the accused, the trial was bad and the convictions should be set aside.

In support of this contention reliance was placed by the learned Counsel for the appellants upon - Gunno v. Emperor AIR 1934 Oudh 325 (A); - Criminal Revn. No. 103 of 1949, D/- 18-10-1949 (All) (B); Raj Narain v. The State AIR 1953 AH 448 (C) and Jai Dayal v. The State . Since the matter is of considerable importance and requires an authoritative decision, the appeals were referred to a Division Bench for disposal. We have now heard full arguments in the case.

10. Section 233, Cr. P. C., requires a separate charge to be framed and a separate trial to take place "for every 'distinct' offence of which a person is accused". The use of the word "distinct" is of great significance and the Legislature having inserted it, we must, so far as possible, give it a meaning and not treat it as redundant. "Every distinct offence' cannot be treated as having the same meaning as "every offence". The only meaning that the word "distinct" can have in the con text in which it occurs is to indicate that there should be no connection between the various acts which give rise to criminal liability. If there i' such a connection, one action is not "distinct" from other actions and each of them, even if it constitutes an offence, docs not constitute a "distinct' offence.

11. The sole ground upon which it is contended that there were three separate dacoities in the present case is that three different persons living in three separate houses were the victims. This is not a proper criterion. There is no difference in principle between such a case and a case in which the victims are three members of a family living jointly in one house but each having a separate room for his personal use and each having his separate personal property. It is not even contended that in the latter case there are three separate dacoities and three separate charges should be framed.

12. It is true that the offence of dacoity was completed the moment that the dacoits removed goods from any one of the three houses and that they could all have been convicted for dacoity even if they had not proceeded to loot any other house. This also is no criterion. As soon as the dacoits remove any one article, no matter how small its value, the offence of dacoity is completed and all persons participating may be convicted for dacoity, but it does not follow that any other properly stolen thereafter from other rooms or even the same room, would become the subject-matter of a distinct offence and a separate charge would have to be framed. Such an interpretation of the law would create an impossible situation and, while it is true, that the benefit of eveiy doubt, even in the matter of interpretation, must be given to the accused, a construction which would defeat the very object of the law must be avoided if it is reasonably possible to do so.

13. On the other hand it is equally impossible to say that because the same group of persons are accused of offences of the same nature committed on the same night within a short time of each other and at the same place or at places in close proximity to each other, there was only one transaction and only one offence was committed. The question really turns upon the circumstances of each case. For instance, a group of persons commits a dacoity in a particular house and is then running away because the villagers have assembled. While passing another house in the same village only a short distance away they find that it has a deserted appearance, and they enter and loot it. In such a case it might well be contended that two separate offences were committed and two separate charges should have been framed. The cases upon which the appellants' learned Counsel relied were really cases of this nature.

14. In - AIR 1934 Oudh 325 (A) the same group of persons robbed different persons between the hours of 6 and 9 in the evening at different places on the Kaoria-Colonelganj Road. They were charged with having committed six different dacoities but there was only one trial and the learned Sessions Judge justified this on the ground that all the offences were committed in the course of the same transaction within the meaning of Section 239(d), Cr. P. C, Nanavutty J. held:

> Now it is quite clear that every offence of dacoity committed by the accused was complete as soon as the person attacked was robbed and his property taken away from him. The mere fact that in the course of one night six dacoities were committed by a gang of dacoits will not make these six dacoities form, part of one and the same transaction.

15. If we may say so with respect the decision of the learned Judge was perfectly correct. The charge itself indicated that there were six different offences. On the facts proved none of the offences was in

any way connected with each other' except that the culprits were common. The evidence required to prove thorn would be different. Even if, by chance, some witnesses were the same, they would have to prove entirely different facts in respect of each offence. The six charges were rightly framed under Section 233, Cr. P. C.

16. Once separate charges have been framed under Section 233, Cr. P. C., a joint trial could only take place whore only one individual was involved if the conditions Lal d down either in Section 234 or in Section 239 were fulfilled and, where several persons were concerned, if the conditions of Section 239 were fulfilled Clauses (c) and (d) of Section 239 correspond to Sections 334 and 235 respectively. Section 239(c) and Section 234 deal with the case of offences of the same kind committed even at long intervals of time provided that the interval is not more than 12 months in all. Under these sections, however, only three of such offences can be tried together and obviously the trial of six similar offences would not be justified.

17. Section 235 and Section 239(d) do not deal with offences of the same kind but with 'different' offences. In this case there is no limitation as to the number of offences which might be tried together, but the condition is that they must be the result of acts done in the same transaction. This is made perfectly clear by the illustrations to Section 235, and a very common instance is a riot in which persons may be charged under Sections 147, 148, 323, 325 and 304/149 in one trial. It is obvious that in the case before Nanavutty J., it could not possibly be said that any one of the six dacoities arose out of any act done during the course of any preceding or succeeding dacoity. Section 289(d), Cr. P. C., did not, therefore, justify a joint trial and a conviction resulting from a joint trial had to be set aside,

18. Sapru J. 'in - Criminal Revn. No. 103 of 1949, D/- 18-10-1949 (All) (B)'. followed the case of AIR 1934 Oudh 325 (A) and held:

> 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 together as to form the same transaction.

19. We see no reason to differ from this exposition of the law. In that case it was assumed that two separate and distinct dacoities had been committed. We do not know on what data this conclusion was based but we see no reason to doubt the correctness of the inference drawn by the learned Judge. On the basis of two separate dacoities Section 239(d), Cr. P. C., would have no application. The learned Judge was, however, considering, as the language used by him indicates, only Sections 235 and 239(d), Cr. P. C. His attention does not seem to have been drawn to Section 239(c), Cr, P. C., read with Section 234, Cr. P. C., and we cannot say what his decision would have been had he been called upon to consider those sections.

20. We would like to make it clear at this point that Sections 234 and 239(c), Cr. P. C., are not mandatory but are permissive. If each of the dacoities (or other offences) were to be proved by distinct and separate evidence and this was likely to lead to confusion in the trial, the Court might well-and indeed should-refuse to try more than one offence at one time. That might have been one

of the considerations present in the mind of Sapru J. when he set aside the trial and the conviction resulting from it. In the present case, as we will presently show, that consideration does not apply.

21. In - our learned brother Brij Mohan Lal J., followed the two earlier decisions. In that case, although the dacoities were committed the same night in the same hamlet by the same persons, it was assumed that there were 8 'distinct dacoities' and on this assumption it was hold that it could not be said that they were committed in the course of the same transaction. The criterion Lal d down is that in order to constitute one transaction there must be some continuity of purpose. We respectfully agree that this is the true criterion. In the present case the evidence which we will discuss later, does establish a continuity of purpose, 21A. The last case upon which reliance was placed was that of . In that case also there were separate and distinct offences although they were all committed by the same group of persons at the same time and place within a short space of time. It was held that the framing of a composite charge in such a case infringed the provisions of Section 233, Cr. P. C., and that if it was shown that the accused had been prejudiced the trial was vitiated.

22. In the present case the position is entirely different. It cannot be said that the looting of the houses of three persons were distinct offences. It is true that the looting commenced at Umrao's house, and then the dacoits went to Chutta's house and finally to Tulsi's house, but there is sufficient evidence to prove that the looting of all the houses was carried on simultaneously. After all the dacoits had to commence with some house or other but the fact that they commenced with Umrao's house does not mean that they had completed ransacking it before passing on to the next house.

23. Param Sukh (P. W. 1) states that when he came back with the Sub-Inspector he saw "dacoits going in and coming out of these houses". The same statement is made by P. W. 4 Constable Ram Saran, who was one of the police party, P. W. 8 Mangrey, a neighbour, P. W. 9 Chiddu, P. W. 21 Bishunu, P. W. 23 Natlia and P. W. 24 Jhalloo. P. W. 3, Mohana, daughter-in-law of Umrao, also states that the dacoits left her house only when the police arrived which obviously means that they were still looting her house while the houses of Chutta and Tulsi were being looted. P. W. 6 Umrao also says that when the police party arrived the dacoits were in front of his house as well as the houses of Chutta and Tulsi. Even, however, if the ransacking of all the houses was not going on at the same time and the three houses were looted one after the other, that would not have the effect of proving three "distinct" offences. There would even in such a case be sufficient continuity of purpose to make it one offence.

24. It was in connection with the looting of the three houses that gunshots were exchanged between the dacoits and the police. The witnesses are all the same and except for the four persons caught on the spot the rest of the accused were sent for trial as a result of identification by various persons. It would be impossible for the identifying witnesses to connect any accused person with the looting of any particular house. All that is said is that they were seen coming in and going out of the various houses during the course of the dacoity. It is obvious, therefore, that if the cases were dealt with separately the evidence would have to be exactly the same in each case and would prove exactly the same facts. There was thus only one dacoity and it is unnnecessary for us to consider whether, if there were several dacoities, a composite charge has caused any prejudice to the accused.

25. The trial not having been vitiated by any illegality or irregularity the question that arises is how far the case against each of the accused is established.

26. The first set of appellants, (Criminal Appeal No. 76 of 1952) are Chunnu, Ram Dayal and Badlu. Of these the first two are alleged to have been arrested the same night on the spot and the third in a 'Bajra' field a short distance off in a wounded condition. Ram Lal appellant in Criminal Appeal No. 182 of 1952 is also said to have been captured on the spot. They all deny that they were arrested at the spot. Chunmi pleaded that he was suddenly caught in the Mela area and has been implicated out of enmity. The other three also pleaded implication out; of enmity. Their case was that Ram Dayal had brought his tobacco shop to the fair and, because his stock had been exhausted, he had gone home to Rampura with the other two to fetch some more during the early hours of the morning. When they were returning they were challenged by some persons sitting by the road side and, on their refusal to stop, they were fired upon and caught. A pistol is said to have been recovered from the possession of Ram Dayal and he was prosecuted under Section 19(f), Arms Act. He was convicted in that case also and he has appealed. His appeal is No. 77 of 1952.

27. There is overwhelming evidence to prove the capture of three of the persons in front of the house of Umrao and others on the night of the dacoity and of the capture of one person in the 'Bajra' field, It is objected, however, that there is nothing in the prosecution evidence to prove that it was Ram Dayal, Chunnu and Ram Lal that were captured at night or that it was Badlu who was captured in the Bajra field. It is further contended that there is no evidence to show that any of them took part in the dacoity since they were not put up for identification.

28. Whether the four appellants mentioned above were or were not known to the witnesses from before, it is clear that they got to be known when they were captured. There was no question, therefore, of their being put for identification, P. W. 1 Param Sukh deposes to the capture of the four persons and refers to them by name and states that, although he did not know them from before, he came to know their names at the time of the arrest. P. W. 4 Police Constable Ram Saran, P. W. 19 Simina, P. W. 21 Bishunu and P. W. 23 Natha pointed out in Court to Ram Dayal, Ram Lal , Chunnu as the three persons captured and to Badlu as the person captured in the Bajra field. P. W. 38 Sub-Inspector Ram Karan Singh also proves that it was the four persons arrested on the spot that he brought to the police station and sent to jail and they were the four appellants named above. There can thus be no doubt as to the identity of the persons arrested on the spot.

29. As to their connection with the dacoity, it is clear from the evidence, leaving aside the evidence of the recovery of stolen property from their possession that Ram Dayal, Ram Lal and Chunnu were captured in front of the three houses looted after an exchange of fire with the police. Two of them Ram Dayal and Ram Lal had gun-shot injuries and the evidence satisfactorily proves that, the gunshots were received during the course of police firing. Apart from the inmates of the houses looted, it was only the dacoits who were in the open space in front of the three houses looted. The spectators were at some distance and were keeping behind corners, as was quite natural when firing was going on both sides. This evidence is quite sufficient to establish that they wore among the dacoits.

30. As to Badlu, his whereabouts were traced by reason of the track ho left in proceeding from the scene of the dacoity to the Bajra field. He was injured in both his feet and must have dragged himself to the field beyond which he could not go owing to his injuries. He must, therefore, have left a distinct track and this track connects him with the dacoits since it establishes that he received injuries during the police firing i.e. that he was among the persons in front of the three looted houses and that it was from there that he proceeded to the field.

31. The defence story cannot be accepted. There Was no reason why persons-presumably a police party- would start firing at passersby on a road at a time when the mela was in full swing and pilgrims would be passing at all hours. The evidence therefore, satisfactorily brings home the guilt to Chunnu, Ram Dayal Badlu and Ram Lal and Criminal Appeals Nos. 76 and 182 of 1952 are dismissed.

32. The fact that a pistol was recovered from the possession of Ram Dayal is proved by all the witnesses produced against him in the Arms Act case, i.e. P. W. 1 Param Sukh, P. W. 3 Sub-Inspector Ram Karan Singh and P. W. 4 Sub-Inspector Jai Karan Singh. There is no reason to disbelieve this evidence. The conviction of Ram Dayal under the Arms Act must also be maintained arid Criminal Appeal No. 77 of 1952 is dismissed.

33. Criminal Appeal No. 98 of 1932 has been filed by Tilak and Jia Lal . Tilak was, identified by four persons P. W. 11 Misri, P. W. 9 Chhidu, P. W. 22 Shanker and P. W. 2,1 Bishnu. In the parade at which Tilak was put up, Misri identified two persons correctly and four wrongly, Bishnu identified three correctly and picked out three wrong persons. Shanker identified two persons correctly and made two mistakes. None of the three persons can be relied on and only the evidence of Chhidu remains, but one identification is not sufficient. The appeal of Tilak must be allowed and his conviction set aside.

34. Jia Lal has also been identified by four witnesses P. W. 1 Param Sukh, P. W. 2 Dalla, P. W. 7 Kishin and P. W. 22 Shauker. The results shown by the last three are good, while Param Sukh is worthless as an identifying witness. Correct identification by three persons is, however, sufficient to bring home the guilt to Jia Lal and his appeal must tail.

35. Sukh (appellant in Criminal Appeal No. 181 of 1952) was arrested on 21-11-1952 and he was brought to the Sitapur Jail according to the finding of the learned Sessions Judge, on 22-11-1952. Some of the identifying witnesses also came from the same locality on the same day by the same train and the appellant was put up for identification by them on the same day. He pleaded that he was shown to them on the way while travelling with them. This is a possibility which is not excluded. The case against him becomes doubtful. His appeal must be allowed and his conviction set aside,

36. Dularey (appellant in Criminal Appeal No. 183 of 1952) has been identified by no less than nine witnesses at the identification parade. Some of them, however, failed to identify him in the Committing Magistrate's Court and others in the Sessions Court. The only witnesses that remained consistent in their identification are P. W. 3 Mangrey and P. W. 24 Jhallo. Of these in one of the earlier parades Mangrey identified three persons correctly and made five mistakes and in the other

he identified three persons correctly and made one mistake. These identifications by him are about 50 per cent. and it is only Jhallo's evidence that can be treated as reliable. It would, however, be unsafe to convict on one good evidence of identification only. His appeal must also therefore be allowed and his conviction set aside.

37. Puttoo appellant in Criminal Appeal No. 184 of 1952 was correctly identified by P. W. 7 Kishan, P. W. 9 Cheddu, P. W. 19 Simma all of whom are good identifying witnesses. The case has, therefore, been brought home against him and his appeal must be dismissed.

38. Bindra is appellant in Criminal Appeal No. 185 of 1952. He has been correctly identified by P. W. 2 Dalla, P. W. 7 Kishan, P. W. 23 Natha and P. W. 19 Simma all of whom are good identifying witnessess. His participation in the dacoity is thus established by good evidence and his appeal must fail.

39. Bhikhari (Criminal Appeal No. 186 of 1952) was correctly identified by a very large number of persons. The evidence of most of them has been rejected by the learned Additional Sessions Judge but there is no reason to reject the evidence of P. W. 7 Kishan, P. W. 10 Jai Rani, P. W. 19 Simma and P. W. 24 Jhallo. This evidence is sufficient to bring home the guilt to Bhikhari whose conviction must be upheld.

40. Maiku (Criminal Appeal No. 187 of 1952) has been identified by P. W. 7 Kishan, P. W. 19 Simma, P. W. 21 Bishan, P. W. 23 Natha, P. W. 24 Jhallo. Identification by Bishan is not trustworthy by reason of the large number of mistakes which he made and it must be rejected but there is no reason to doubt the correctness of the identification by the remaining witnesses. The participation of Maiku in the dacoity is established by sufficient evidence and his appeal must fail.

41. Faqirey (Criminal Appeal No. 188 of 1952) has been correctly identified by four witnesses of whom P. W. .1 Param Sukh is unreliable as a witness of identification. There is, however, good evidence of identification by P. W. 5 Srimati Jarika, P. W. 9 Chedda and P. W. 19 Simma. His appeal too must fail.

42. Chauthi (Criminal Appeal No. 189 of 1952) was correctly identified by four persons but two of them failed to identify him in the Sessions Court. We are left with P. W. 7 Kishan & P. W. 19 Simma identification by whom has been good throughout. Thus die crime is brought home to him by sufficient evidence and his appeal must be dismissed.

43. Manna has been tried separately for the same dacoity because he could not be caught earlier. After his arrest he was put up for identification in jail and out of the large, number of witnesses sent up for the purpose of identifying the accused of this very dacoity, only six were chosen to be sent up to identify him. All of them identified him and not one of them made a mistake. This is rather a remarkable result when it is recollected that according to the witnesses they had last seen this man during the course of the commission of a dacoity at which firing was taking place and did not see him again till a year later. The whole identification becomes suspicious.

44. It is said that he was absconding but although a warrant is said to have been obtained for the arrest of Manna it has not been produced and it is admitted that no proceedings were taken under Sections 87 and 88. Further Manna's name is not shown in the first charge-sheet as an absconding accused although the investigating officer states that he had got to know his name before he filed the charge-sheet. In these circumstances his conviction depending, as it does, only upon evidence of identification cannot be upheld.

45. The result is that we dismiss Criminal Appeals Nos, 76 of 1952 (Chunnoo, Ram Dayal and Badlu), 77 of 1952 (Ram Dayal). They are on bail; they shall surrender to serve out the remainder of their sentence; 182 of 1952 (Ram Lal), 184 of 1952 (Puttoo), 185 of 1952 (Hindra), 186 of 1952 (Bhikhari), 187 of 1952 (Maiku), 188 of 1952 (Faqiray) and 189 of 1952 (Chauthi) are also dismissed. Criminal Appeal No. 98 of 1952 is allowed so far as it is on behalf of Tilak. His conviction and sentence are set aside. He is on bail. He need not surrender. His bail bonds are cancelled. In so far as this appeal relates to Jia Lal, it is dismissed and he should surrender to serve out the remainder of his sentence.

46. Criminal Appeal Nos. 181, 183 and 427 of 1952 are allowed. The conviction and sentences of Sukha, Dularey and Manna are set aside. Sukha and Dularey shall be released forthwith, unless they are required in connection with some other offence. Manna is on bail. He need not surrender. His bail bonds are cancelled,

47. The learned Counsel for appellants in Appeals Nos. 77 and 98 of 1952 prayed for leave to appeal to the Supreme Court on the ground that an important question of law as to the validity of the trial arose. We have not differed from the earlier decisions of this Court and have only held that each case depends upon its own circumstances, We accordingly did not consider this to be fit case for the grant of leave and we reject the prayer.