Om Prakash And Ors. vs The State on 19 August, 1955

Equivalent citations: AIR1956ALL163, 1956CRILJ358

JUDGMENT

James, J.

1. Om Prakash, Ganga Sahai, Banney, Sharafat, Bhopal and Hira Singh were tried before the Sessions Judge of Moradabad for the offence of dacoity accompanied with murder under Section 396 I.P.C. The learned Judge found the evidence against Bhopal and Hira Singh insufficient and acquitted them. He held the charge fully proved against the remaining four persons.

He sentenced Om Prakash to transportation for life, while to Ganga Sahai, Banney and Sharafat he awarded rigorous imprisonment for fourteen years each. In addition he imposed a fine of Rs. 100/- on each of the pe.isons he found guilty. The present appeal has been preferred by these four persons against their conviction and sentences.

2. The offence took the form of a highway robbery by more than five persons who were armed with pistols and lathis. The victims were a dozen shopkeepers of the town of Sambhal, most of whom are refugees from what it now is West Pakistan. They have given the details of the crima It appears from their testimony that on 17-10-1950 they had gone with their ware to the weekly market of a village called Sondhan.

After spending the whole day doing business they started off for home towards the evening, carrying with them the proceeds of the sales made during the day and the unsold goods. They were following the main road, and some were riding ponies while others were on foot. At about 7-30 P.M. they reached a point on the road lying between the villages of Kanwalpur and Salarpur. At that point a footpath, which serves as a short cut, leads off from the main road.

Three of the shopkeepers decided to follow the footpath, while the rest continued their journey on the main road. The three men who had just separated were suddenly attacked by a gang of at least six robbers who carried pistols and lathis. Pistol shots were first fired and then looting indulged in. After looting the three shopkeepers the miscreants came on to the main road and set upon the remaining nine.

In the course of the robbery the criminals did not hesitate to use their weapons even their firearms. A shopkeeper named Jaswant Singh was shot dead; another named Sri Chand was seriously injured with a bullet; four others were, administered lathi blows. The dacoits appropriated whatever they could lay their hands upon, comprising about Rs. 500/- in cash and goods worth about Rs. 400/-.

The victims had started shouting for help immediately the attack on them had been, launched, and their alarm attracted to the scene the residents of a neighbouring village. These persons rushed towards the scene challenging the wrongdoers. On their approach the robbers fled with their booty. It was the seventh night after the new moon, and since the night was a clear one, the entire area was illuminated with bright moonlight.

The looting and the violence, had naturally brought the robbers very close to their victims, so that the latter had every chance of seeing them at close quarters in the light of the moon and of mark- ing their features. The miscreants were complete strangers. A report of the occurrence was lodged by one of the victims without delay at the police station of Sambhal.

3. The story of the crime as narrated by the shopkeepers stands unchallenged and conclusively proves the commission of an offence punishable under Section 396 I. P. C., and indeed the learned counsel for the appellants before us has made no attempt to question the factum of the crime. Accordingly all that is necessary for us in this appeal is to exa- mine the evidence and judge whether or not the participation of the present appellants in the crime has been established beyond reasonable doubt.

4. Though the police had started their enquiries without delay they for some considerable time had been unable to discover any trace o the culprits. Now, on 14-12-1950. the Sub-Divisional Magistrate of Sambal was encamping in that town when the appellant Ganga Sahai, who was all by himself and who was a stranger to that officer, appeared before him and volunteered to make a confession. After satisfying himself that the confession was being freely and voluntarily made the learned Magistrate took it down word for word.

The statement thus recorded has been marked Ex. P21. In this Ganga Sahai admitted participation in two separate crimes, one being that which is the subject matter of the present appeal. In giving details of the two offences he mentioned the names of the persons who had been his confederates' in them. After recording the confession the learned Magistrate sent for a police constable and under his escort Ganga Sahai. was taken in purdah first to the local lock-up and then to the District Jail.

5. Ganga Sahai's statement was the first definite information received by the police with regard to those persons whd were responsible for the present crime. Steps were accordingly taken to arrest the men named therein. The appellants Banney and Sharafat, who are residents of village Lakhuri, were arrested at their homes on the 20th December, while the appellant Om Prakash was apprehended on the night of 26-2-1951 in the course of an armed encounter with the police.

Evidence has been led to show that on arrest each person was warned that he would be produced for identification, and further that from the moment of arrest to the moment of his admission into the District Jail at Moradabad his face was kept veiled so that no outsider could see him. The suspects were put up for a test identification held by a Magistrate with due precautions, and each man was pointed out by several of the eye-witnesses of the instant dacoity.

6. Against Ganga Sahai the prosecution rely on his confession Ex. P21, in the recovery from him of a dhoti alleged to be part of the loot, and on identification. Against the other three appellants the prosecution case rests solely on evidence of personal identification.

7. It appears that Ganga Sahai's confession Ex. P21 is a material factor in another appeal which we are duo to hear shortly, and that the dhoti alle gedly recovered from him is also connected with the confession. For that and other reasons we have decided to ignore the confession for, purposes of the appeal before us. We propose to examine the appeal solely from the standpoint of the test identification.

8. On the question of identification we might state at once that the evidence against the four appellants is excellent for we find each of them correctly and consistently pointed out by at least four of the eye-witnes.ses of the crime. These witnesses have also pointed out the appellants before the Court and sworn that they saw them taking part in the dacoity.

The witnesses further declare that they had never seen these persons before the dacoity or in the interval between the dacoity and the identification parade. We have already mentioned that there was bright moonlight and that the robbers and their victims had seen each other from very close quarters. It is clear therefore that the eyewitnesses had every chance of marking their fea-tures. Accordingly the evidence of the test idcnti-fication is deserving of very high value.

9. The contention of the learned counsel for the appellants is that the witnesses were enabled to identify the appellants simply because they (the appellants) had been shown to them while they were in detention in the lock up of the police station at Sainbal. Learned counsel candidly admits that there is no direct evidence on the record to establish this, but he argues that there is sufficient defence evidence at least in the case of' Banney and Sharafat which leads to the conclusion that these two appellants must have been previously shown to the witnesses.

10. Now, the defence set up by these two appellants is that they were arrested, not on the 20th December, as claimed by the prosecution, but on the 14th December, and mat between the 14th and the 20th December, they were kept confined at the police station and shown to the witnesses. Reliance is attempted to be placed on three defence witnesses, Bhup Singh, Ram Sarup and Shib Charan Singh, all natives of their own village of Lakhauri.

These witnesses declare that a police constable of Sambhal named Naubat Gir visited Lakhauri on the 14th December and took Banney and Sharafat with him to the police station and that thereafter these two persons did not return home. It is necessary to stress that each one of these witnesses has specifically given the date as 14-12-1950, and further that their statements are confined to a supposed incident in village Lakhauri but are totally silent as regards what happened at Sambhal or elsewhere.

11. The appellants' learned counsel concedes that on this evidence he cannot claim to have proved that Banney and Sharafat were shown to the prosccution witnesses at the police station of Sambhal, but what he contends is that these two appellants were in fact detained at the police station from the

14th to the 20th December, and from this fact asks us to infer that showing must have been done.

On the other hand it is urged on behalf of the State that the two men were arrested on the 20th, that no showing was done and that the three defence witnesses are absolutely biased and untrustworthy. Accordingly we turn to consider the testimony of the defence witnesses and judge what reliance we can legitimately place on their words.

12. The crux of the matter is: can the three defence witnesses be believed when they declare that these two appellants were arrested in their village on the date, the 14th December? It is our considered opinion that they cannot. We hold this principally because they have no idea of other dates material to them personally. Bhup Singh has been unable to mention the date of his last visit to Moradabad.

To a Court question he replied that he remembered the date 14-12-1950 because Sharafat was his servant and that he had paid him his salary that day. Considering that Bhup Singh was making his statement unaided by any documentary evidence many months after the supposed episode, and considering that he could not mention a simple date like that of his last visit to the head-quarters of his district, he cannot be depended on regarding dates.

Ram Sarup's merit as a witness of dates is sufficiently exposed by his assertion that the month of July consists of thirty days. Shib Charan Singh has an only child a daughter, but is unable to tell her birthday. It is clear therefore that these witnesses arc thoroughly unreliable in the matter of dates, from which it follows that their glib assertion of the date of the arrest of Banney and Sharafat cannot. be accepted.

It has been argued that Bhup Singh is the Sarpanch of the Panchayati Adalat and Ram Sarut-a Pradhan of the Gaon Sabha and consequently persons of status and respectability. We are inclined to think that the explanation for the dishonest stand of these persons is to be sought in the fact that they depend on votes of the villagers for holding office, and it seems to us that where there is a tug of war between votes and truth it is the pull of the votes which proves the stronger.

We have little doubt that Bhup, Singh and Rain Sarup are afraid that, if they do not assist Banney and Sharafat they would lose the votes of the friends and adherents of the latter in the next election. We should also like to point out that the evidence of these defence witnesses made no appeal to the trial Judge who had the special advantage of having them before him in the witness-box.

The circumstances too militate against their story. Although Banney and Sharafat had been supposedly arrested without rhyme or reason and detained at the thana for a week contrary to law, no one from their village took the, trouble of finding out what the matter was, still less to complain to the authorities against the highhandedness of the police. We refuse to believe that the arrested men had no relatives or friends in the village having at least this much interest in their welfare.

Besides, surely. Bhup Singh, as Sharafat's employer, could have taken some steps had his story been true, but he did nothing. On the other hand, there is definite evidence given by the police officials,

supported by their official records, that Banney and Sharafat were arrested on the 20th December, and further that from the time of arrest to the time of admission into the District Jail their faces were kept concealed and no. outsider had any opportunity of seeing them.

13. We thus find no force in the appellants' learned counsel's contention that the prosecution witnesses were shown the appellants prior to their test identification. We are therefore left with the position that the witnesses did not know the appellants from before and that they had no chance of seeing them at any time between the offence and the identification parade.

We might add that there is no suggestion whatsoever on behalf of the appellants of any enmity or malice borne to them by the prosecution witnesses, so that the latter manifestly had not the slightest motive for foisting a false charge on them. It follows that the evidence of identification is trustworthy and deserves full acceptance,

14. We have mentioned earlier that each of the present appellants has been consistently identified by at least four of the eye-witnesses of the crime. The evidence is therefore of a high order. It unmistakably brings home the charge to them. Their conviction under Section 396, I. P. C., is there-tore correct and must be affirmed.

15. The question of .sentence has also been raised, and it is pointed out by the learned counsel for the appellants that Ganga Sahai, Banney and Sharafat have been awarded fourteen years rigorous imprisonment each by the Sessions Judge whereas the maximum term of rigorous imprisonment prescribed by Section 396 I. P. C. is only ten years.

We welcome this opportunity of giving our considered views on the important questions of sentence in dacoity cases, for we are distressed at the tendency of many Sessions Judges of the present time to treat dacoits leniently and to pass light sentences on them--five years' imprisonment appears to have become common -- and recently we even came across a case where the sentence was as low as four years.

We wish to express our strong disapproval of this. Dacoity in our opinion should be treated as one of the most serious offences noticed by our Penal Code. It is invariably the work of a well-knit organisation. It involves deliberation and preplanning. Its victims are law-abiding citizens who have given no provocation to the miscreants. It is accompanied by physical violence on people who have no adequate means of defending themselves and who cannot be fore-armed because they have not been fore-warned. Frequently they are tortured and their womenfolk dishonoured. Often even children are not spared.

Recent years have seen a marked increase in the use of fire-arms by dacoits--now and then we even find modern rifles and sten-guns used. Gunshot wounds are inflicted without mercy, and valuable lives of innocent persons are often lost. Dacoits create panic in the country-side and interfere with the even tenor of life, frequently completely upsetting the economy of the rural area.

A dacoit is actuated by the contemptible motive of appropriating property lawfully belonging to another. The crime itself is difficult to trace, and only a small proportion of the criminals taking part are arrested; even then it is often difficult to secure the conviction of more than a fraction of them. For these reasons it is a grievous mistake to treat dacoits lightly in the matter of punishment.

A criminal trial is held in the public interest with the twin objects of punishing the wrong doer and deterring others from following in his footsteps. Accordingly, unless there is satisfactory proof of the existence of: mitigating circumstances, the sentence of dacoits should invariably be heavy and deterrent.

16. This is in full accord with the will of the Legislature, which with the Courts are charged with the duty of interpreting. Section 395 I. P. C., punishes a person found guilty of dacoity with transportation for life or with rigorous imprisonment for a term which may extend to ten years, with an unlimited fine in addition. When murder. is committed in the course of the dacoity evert the death penalty can be exacted under Section 396, and it is worthy of note that that penalty is independent of whether or not the person concerned himself committed the murder.

Section 397 lays down a term of at least seven years' rigorous imprisonment for a dacoit who uses any deadly weapon, or causes grievous hurt to any person, or attempts to cause death or grievous hurt. Even more significant are the terms of Sections 399 and 402 of the Code. Preparation or assembly for committing a crime is normally not an offence, not even if the purpose be murder. But dacoities have been placed on an entirely different footing.

Section 399 provides for rigorous imprisonment upto ten years along with fine for a person who makes any preparation for, committing dacoity, while under Section 402 mere assembly for the purpose of committing this crime is punishable with rigorous imprisonment upto seven years together with fine. Quite obviously the Legislature insist that the offence of dacoity be viewed with the utmost seriousness.

17. Our own High Court has emphatically laid down the same, and it is a matter of regret that many Sessions Judges and District Government Counsel are ignorant of relevant decisions of this Court. In -- 'Emperor v. Lakhan Singh', AIR 1936 All 311 (A), a Division Bench of this Court held that in ordinary circumstances a sentence of rigorous imprisonment for seven years is the least sentence which should be passed under Section 395 I. P. C. Another Division Bench in -- 'Basni v. Emperor', AIR 1941 All 359 (B), observed :

> "We should like to say that we think that the Courts below are rather inclined not to pass suffici ently severe sentences in cases of dacoity. It is true that Section 397, I. P. C., imposes a minimum sen tence of seven years where a dacoit has used a deadly weapon or had caused grievous hurt, but that does not mean that a sentence of less than seven years should be passed, on persons against whom it is impossible to prove that they used dan gerous weapons themselves or caused grievous hurt.

> The provisions of Section 395 I. P. C., are that a person who commits dacoity shall be punished with transportation for life or with rigorous imprisonment for a term which may extend to ten years, and if the dacoity is a very serious one it naturally follows that the maximum sentence, or something approaching the maximum sentence, should be passed upon the persons concerned.
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> These dacoities are very serious pffences in which a great deal of harm is done, quite innocent people are injured and often tortured, women are insulted and worse may happen to them, the owner of property may be deprived of his life savings. These offences do not seem to decrease and the only conclusion to which we can come is that the sentences passed are not sufficiently deterrent. We think that the learned Judge did very well in this case in passing sentences of transportation for life."

Emperor v. Debi Charan', AIR 1942 All 339 (C), was a case where- in the course of a dacoity a fight had occurred between the dacoits and the village people and a number of persons sustained injuries; one of the dacoits was found in possession of a loaded revolver; the Sessions Judge had sentenced him to four years' rigorous imprisonment. Their Lordships held that sentence to be inadequate and enhanced it to rigorous imprisonment for ten years.

In -- 'Raj Ballam v. State', AIR 1955 NUC (All) 1504 (E), decided by one of us, five of the village people had received gunshot wounds, luckily none fatal. It was held that the sentence of five years' rigorous imprisonment passed on the convicted dacoits by the trial Court was "hopelessly lenient" and that the proper sentence should have been ten years.

18. Some Sessions Judges . think that dacoity committed on a public road is less heinous than that committed in "a house. This is an equally mistaken view. A Division Bench of the Patna High Court in -- 'Adhik Lal v. Emperor', AIR 1942 Pat 156 (D), held that the commission of a dacoity on the highway between sunset and sunrise must be treated as an aggravation of the offence justifying a graver punishment; although no fire-arms had been used in the course of that dacoity their Lordships approved of a sentence of seven years' rigorous imprisonment. We respectfully endorse the view of their Lordships of the Patna High Court.

19. We have already observed that unless there is satisfactory proof of the existence of mitigating circumstances, the sentence of a dacoit should invariably be heavy and deterrent. We wish to impress upon Sessions Judges the necessity of acting in accordance with this view. A reasonable circumstance in mitigation can be the extreme youth of an offender, for in his case it is arguable that he acted under the domination of the will of his seniors.

There can also be what for the sake of convenience might be termed a "technical dacoity" for example, where two parties in a village have a dispute over some agricultural land and one of them numbering five or more forcibly harvests the crop and removes it. But where the dacoity is a real one, it does not matter whether it is in a house or on a highway--the normal sentence under Section 395 I. P. C., should be seven years' dgorous imprisonment together with fine.

Where fire-arms have been used or the village people injured or cruelly treated or their womenfolk dishonoured ten years would be more appropriate. Gangleaders and previous convicts deserve to be punished even more severely. Leniency to those who are old enough to understand the nature and consequences of their acts is indefensible, and in the interest of society it is imperative for criminals to be made to learn that dacoity will not pay. Sessions Judges fail in their duty if they" do not sufficiently understand this.

20. Turning now to the argument of the appellants' learned counsel regarding sentence, we agree that Section 396 I. P. C., does not envisage rigorous imprisonment for a term exceeding ten years, and indeed as the law laid down by the section stands there is no middle course between ten years' rigorous imprisonment and transportation for life. Hence it is clear that Ganga Sahai, Banney and Sharafat could not be awarded rigorous imprisonment for fourteen years, as has been ordered by the learned trial Judge.

We consider that in view of the proved facts of the present crime transportation for life to these three appellants would not have been inappropriate. Nevertheless we realise that we cannot pass that sentence now, since that would amount to enhancement whereas no notice of enhancement has been issued.

Accordingly we reduce the sentence of each of these three appellants to rigorous imprisonment for ten years. With regard to Om Prakash we affirm the sentence of transportation for life passed on him by the Court below since there is good reason to believe that he used a pistol and that he was one of the leaders of the gang. There is no justification whatsoever for making any reduction in his imprisonment. The sentence of fine passed by the trial Judge does not call for any interference on our part.

21. Accordingly with the modification in the sentences passed on Ganga Sahai, Banney and Sharafat indicated above we dismiss this appeal.