

Saktu And Anr. vs State Of U.P. on 27 October, 1972

Equivalent citations: AIR1973SC760, (1973)1SCC202, AIR 1973 SUPREME COURT 760, 1973 (1) SCC 202, (1973) 1 SCC 262, 1973 SCC(CRI) 307

Bench: J.M. Shelat, Y.V. Chandrachud

JUDGMENT

1. Eleven persons were tried by the learned Assistant Sessions Judge, Bahraich for offences under Sections 395, 397 and 412 of the Indian Penal Code. The learned Judge acquitted accused No. 10 but convicted the others. Accused Nos. 6 and 7 were convicted under Section 395 and were sentenced to suffer rigorous imprisonment for 7 years. In appeal the High Court of Allahabad upheld the conviction of accused Nos. 1, 6 and 7 only. This appeal by special leave is filed by accused Nos. 6 and 7 against that judgment.

2. The incident out of which the prosecution arises happened on the night between the 25th and 26th March, 1965 in the village of Vaibahi District Bahraich. The complainant, Jwala Prasad, heard some noise at about mid-night and no sooner did he come out of his house than was he overpowered by 4 dacoits. Fifteen or sixteen persons thereafter entered Jwala Prasad's house and looted his property. The neighbours of Jwala Prasad went to his house on hearing the commotion and one of them set fire to a heap of dry straw so as to facilitate identification of the dacoits. The First Information Report was lodged by Jwala Prasad at the Khari-ghat police station at about 10 a.m. on the 26th.

3. That a dacoity took place in the house of Jwala Prasad on the night between the 25th and 26th March, 1965, was never disputed and is not in dispute before us. Learned Counsel appearing on behalf of the appellants, however, contends that the High Court was in error in making a distinction between the case of the appellants on the one hand and of those others who were acquitted by it. We cannot accept this contention because the High Court acquitted the other accused on the ground that there was enmity between the complainant and those accused. One could not exclude the possibility that those accused were implicated due to enmity. As between Jwala Prasad and the appellants there was no enmity whatsoever and therefore Jwala Prasad had no reason to implicate them falsely.

4. Learned Counsel then contends that no overt act has been attributed to the appellants by any of the witnesses and no recovery is also alleged to have been made from them. These circumstances would, according to the counsel, show that the appellants had not participated in the dacoity. There is no substance in this submission because appellants who are residents of an adjoining village were admittedly known to the several witnesses who have identified them and it is not disputed, that the dacoits had not covered or masked their faces. Kallu, P.W. 3, Gokul P.W. 5, Chandra Bhan P.W. 8, Mangrey P.W. 11, Jwala Prasad P.W. 12, and Waris P.W. 25 have uniformly implicated the appellants. As said by the trial Court, these are independent witnesses

5. It was Urged by the learned Counsel that the First Information Report was lodged after some delay and therefore there was opportunity for manipulation. We are not disposed to agree that there was any delay in lodging the F.I.R. The police station where the complaint was lodged is six miles away from the scene of occurrence. The occurrence took place at about 1 a.m. on the 26th and the complaint was lodged at about 10 a.m. Jwala Prasad bore no ill-will or enmity to the appellants and therefore there was no question of his delaying deliberately the filing of the F.I.R. so as to involve the appellants falsely.

6. The last contention advanced on behalf of the appellants is that as the High Court found that only 3 persons had participated in the occurrence it was an error to convict them of dacoity, because the offence of dacoity cannot be committed by less than 5 persons. In support of this submission counsel relies on the decision in *Ram Shankar Singh v. State of Uttar Pradesh*. We are unable to accept this submission. In *Ram Shankar Singh's* case six known persons were charged with dacoity and as the High Court acquitted three out of the six, it was held by this Court that the remaining three could not have been convicted for dacoity. The charge in the instant case is that apart from the named 7 or 8 persons, there were 5 or 6 others who had taken part in the commission of the dacoity. The circumstance therefore that all except the three accused, have been acquitted by the High Court will not militate against the conviction of those three for dacoity. It is important that it was at no time disputed that more than 13 or 14 persons had taken part in the robbery. The High Court acquitted a large number of the accused because their identity could not be established. The High Court, however, did not find that the group which committed robbery in the house of Jwala Prasad consisted of less than 5 persons.

7. In the result we dismiss the appeal and confirm the order of conviction and sentence.