Supreme Court of India
Lachhman Ram And Ors. vs State Of Orissa on 1 March, 1985
Equivalent citations: AIR 1985 SC 486, 1985 CriLJ 753, 1985 (1) Crimes 611 SC, 1985 (1) SCALE 356, (1985) 2 SCC 533
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Bench: A Varadarajan, S M Ali
JUDGMENT S. Murtaza Fazal Ali, J.

1. By our Order dated February 15, 1985 we dismissed these appeals and upheld the convictions of the appellants but reduced the sentence in respect of all the appellants to seven years' rigorous imprisonment. We now proceed to give our reasons for the said Order.

2. In criminal appeal Nos. 41 and 42 of 1974, the High Court convicted and sentenced three appellants to ten years' R.I. and convicted and sentenced the other five accused, who were acquitted by the Sessions Judge, to eight years' R.I. under Section 395 of the Indian Penal Code. The facts of the case have been exhaustively narrated in the judgments of the Sessions Judge and the High Court and it is not necessary for us to repeat the same which will amount to an exercise in futility.

3. The narration of the facts by the courts below clearly shows that all the accused persons committed dacoity in the houses of the complainants one after the other in quick succession and looted and bolted away with various kinds of property in the nature of watches, ornaments, etc, The admitted facts further show that the accused persons were not local persons but are alleged to have come from Delhi for the purpose of committing dacoity at the places of occurrence. Another important Fact which might he highlighted at this stage is that it would appear that the nature and character of the dacoities is based on a common pattern and in all the three places where the dacoity was committed, the modus operandi seems to be the same. Even the recoveries made at the instance of the accused persons during the course of investigation also show a clear and close link between the form and the manner of the dacoities.

The only questions with which we are concerned are :

1) question of identification of the dacoits who are said to have committed dacoities in three places one after the other in quick succession, and

2) recovery of various Articles made at the instance of the accused in the presence of panch witnesses.

4. It is manifest that the evidence furnished by the recovery of various Articles at the instance of and on being pointed out by the accused is fully corroborated by the witnesses, in whose presence the recoveries were made, and all of them have signed the panchnamas.

5. As regards the first plank of the prosecution case regarding identification, there appears to be a good deal of difference of opinion between the trial court and the High Court. The admitted facts are that the dacoits entered the premises of the complainants and tried to conceal their faces by tying

pieces of cloth but even so some of them were identified by some of the witnesses. The Sessions court, however, completely rejected the evidence regarding identification as not being above-board. The Sessions Judge has opined that as the dacoits had concealed their faces, it was not possible for the witnesses to have identified them even if there was electric light in the house, the learned Judge further relied on the fact that even in Test Identification parade, held soon after the occurrence, no precautions were taken to mix the accused with persons having similar features in order to test the observational powers of the witnesses. He further held that there is some evidence to show that all the accused were taken round the police station and other places and the possibility of their having been seen by the witnesses cannot be reasonably excluded. The High Court, however, took a contrary view and accepted the identification by some of the witnesses which seem to be consistent in that the accused were identified by them in the T.I. parade and in the court as well. Thus, the High Court held that despite the infirmities in the evidence about identification, the testimony of some of the witnesses was free from blemish. In the circumstances, we do not consider it necessary to go into the pros and cons or truth or falsity of this aspect of the matter regarding which the two courts below have differed. We, therefore, propose to concentrate on the second piece of evidence which seems to us to be absolutely free from any infirmity as we shall show heieafter.

6. The admitted facts, so far as the recoveries are concerned, may be summarised as follows :

That all the accused made confessional statements before the police and accordingly took the police to various places from where at their instance recovery of ornaments, watches and other articles was effected. This fact is clearly mentioned in the panchnamas which have not been doubted even by the Sessions Court. But the trial court seems to have brushed aside this important evidence of recovery mainly on two grounds. In the first place, the Sessions Judge was of the opinion that as the panch witnesses could not identify the accused the evidence of recovery becomes extremely doubtful. Here, the learned Sessions Judge has misdirected himself by misconstruing the scope of recovery. It is proved that the recoveries were undoubtedly made at the instance of the accused and in the presence of the penchas who had appended their signatures in proof of the recoveries in the various panchnamas and have been examined in court. As these witnesses were not meant to identify the accused at whose instance the recoveries were made, the reasoning of the learned Sessions Judge to reject their evidence seems to us to be absolutely fallacious. It is obvious that by the time the witnesses came to give evidence in the court, they could not have remembered which accused disclosed which article. It was sufficient if these facts were proved by the panchnamas which were signed by the witnesses as representing the true state of affairs. These witnesses have not denied in the court that they have signed the panchnamas or the recoveries were made in their presence at the instance of the accused.

7. Thus, the question of identification completely loses its significance and is of no value at all in judging the question of recovery on which alone the appellants are liable to be convicted under Section 395 IPC by applying the presumption warranted by Section 114 of the Evidence Act.

8. Secondly, the learned Sessions Judge was of the opinion that the various places were such as would be open and accessible to one and all. This reasoning of the learned Sessions Judge is not borne out by the record because the evidence of the investigating officer as also the panch witnesses

shows that the articles recovered were kept concealed either under a stone or under a bridge or at other places which cannot be said to be accessible to any ordinary person without prior knowledge.

9. We have gone through the evidence of the panch witnesses and we are greatly impressed by their consistency and reliability and we see no reason to disbelieve their evidence. The accused persons having come from Delhi were naturally anxious to keep the articles at places from where they could get them easily and quickly collect them and proceed to Delhi. But their attempt was nipped in the bud by a prompt and expeditious investigation. We are, therefore, unable to agree with the learned Sessions Judge that the evidence of recovery should not be believed. In view of our clear finding, the factum of recovery of articles at the instance of the accused persons in the presence of police officers and panch witnesses who have deposed to the same, is itself sufficient to bring the case not under the provision of Section 412 IPC but also under Section 395 IPC with the aid of Section 114 of the Evidence Act because the recoveries were made very soon after the occurrence.

10. We, therefore, uphold the judgment of the High Court reversing the acquittal of the accused by the Sessions Judge and convicting them under Section 395 of the Indian Penal Code. The High Court has not given any reason why three of the accused were convicted and sentenced to ten years' R.I. whereas the other five accused, whose acquittal was reversed, were sentenced to only eight years. In the circumstances, we think the proper course would be to award a uniform sentence to all the accused persons convicted by the High Court and, therefore, while upholding the conviction of the appellants we reduce the sentence to seven years' R.I. in the case of all the appellants. All the sentences awarded for various offences shall run concurrently. The bailbonds of the appellants are cancelled and they must now surrender. The concerned authorities may take them into custody at once and send them to jail for serving out the remaining portion of their sentence.

11. With this modification, the appeals are dismissed.