
(1977) 02 BOM CK 0013
In the Bombay High Court

Uttam Rajaram Bhil and Others

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 07-02-1977

Acts Referred:

Penal Code, 1860 (IPC) — Section 323, 342, 395

Citation : (1978) CriLJ 935

Hon'ble Judges : Shah, J;Jahagirdar, J

Bench : Division Bench

Judgement

Shah, J.—This Criminal Appeal was originally filed by accused Nos. 1, 8 and 12, who were convicted for the offences Under Sections 395. 323 and 342, IPC and sentenced to suffer rigorous imprisonment for three years. At the time of admission, however, the appeal preferred by accused No. 1 was summarily dismissed, The appeal only survives so far as accused Nos. 8 and 12 are concerned.

2. The facts so far as they are material are few. On Oct. 25, 1974, at about 10 or 11 p.m., an offence of dacoity was committed by about 14-15 persons in the land of the complainant Raiva Mahagalya Bhil. at the hamlet Zirnipada within the limits of the village Brahmanwel in Taluka Sakri, District Dhulia. It is the case of the prosecution that on that night, the complainant, his son Bhavsingh, one Gangaram and his wife Sarkubai were in the land at the time of the incident. The dacoits committed the dacoity by assaulting the complainant, and after tying the four persons removed 5-6-bags of ground-nut from the land. The dacoits then proceeded towards the village Brahmanwel via hamlet Bandharpada. It is alleged that after commuting the theft, the dacoits went away by the side of Durgadevi temple en route Brahmanwel village.

3. In all 13 persons including the present accused Nos. 8 and 12 were tried for the aforesaid offences by the learned Sessions Judge, Dhulia. On a consideration of the evidence on record the learned Sessions Judge acquitted all the accused except accused Nos. 1, 8, 11 and 12. Accused No. 11 had preferred a separate

appeal which was summarily dismissed. Similarly, the appeal of accused No. 1 has also been summarily dismissed at the admission stage.

4. The only evidence against accused Nos. 8 and 12 on which reliance was placed by the learned Judge consists of the testimony of the two eye-witnesses Bakaram (P. W. 4) and Bapu (P. W. 8), and the confession of the co-accused Uttam (accused No. 1). The two witnesses Bakaram and Bapu were watchmen. According to Bakaram, he saw 14-15 persons coming from the direction of the field of the complainant and going towards Nawapada with some bundles on their heads. He saw an axe with one of them and the others having sticks. He also smelt the smell of freshly cut ground-nut. He has further deposed that he identified four persons when he along with his colleagues flashed torchlight at those persons when they accosted them. He identified accused Nos. 1, 8, 11 and 12, out of the 14 or 15 persons who according to him had come from the direction of the complainant's field. The conduct of this witness is quite unnatural. Surprisingly enough, he and his colleagues did not chase any of the dacoits. The explanation given by the witness is that some of the accused persons threatened him to keep quiet and one was armed with an axe. Even assuming this to be a valid reason for their not chasing the dacoits, they should at least have contacted the complainant in the field itself and informed him about the names of the dacoits whom they had identified. However, it appears that he did not take any such steps. According to him, he narrated the incident to his other colleagues in the morning. He has explained away his conduct by saying that as he was afraid, he did not signal his other colleagues by blowing whistles. He also admitted that he did not tell about the incident to the police patil till next day morning. This conduct of the witness, in our view, is highly unnatural particularly when he claims to "be a watchman expected to watch the crops in the surrounding fields. Moreover, he claims to have identified four persons only on the flash of the torch light at night time. It is rather difficult to believe this witness on the question of identification. Even if he were to see some of the persons in the torch-light, there is possibility of his committing a mistake in identifying the four accused. It is, therefore, difficult to place any reliance on the testimony of this witness.

5. The evidence of the other watchman Bapu (P. W. 8) will have to be rejected on the same grounds. He too has admitted in his evidence that he did not reveal the incident to anyone because he was threatened by two of the dacoits. He has further stated in his evidence that it was only when one Dharma told them that a theft was committed in the field of his brother-in-law that he revealed the names of the four thieves to him. He has further admitted in his evidence that he did not report the incident to the sarpanoh or the police patil till the next morning. We do not find his evidence to be trustworthy for the reasons for which we are unable to place reliance on the testimony of Bakaram, P. W. 4, and, therefore, the evidence of this witness also deserves to be rejected.

6. If the evidence of these two witnesses is kept out of consideration, what

remains is only the confession of the co-accused Uttam. It is well settled that no conviction can be based on the confession of a co-accused. There is no other evidence which connects the accused 8 and 12 with the dacoity. We are, therefore, unable to uphold the decision of the learned Sessions Judge.

7. In the result, the appeal is allowed; the order of conviction and sentence passed against the appellants is quashed and set aside, and they are directed to be set at liberty forthwith.