Shivappa and Others

Vs

The State of Mysore

Criminal Appeal No. 87 of 1967

(CJI M. Hidayatullah, A. N. Ray, I. D. Dua JJ)

19.02.1970

JUDGMENT

HIDAYATULLAH, C.J. -

1. These are 14 appellants who appeal against their conviction under Section 395 of the Indian Penal Code sentences of 5 years' rigorous imprisonment and fine of Rs. 1,000/- passed on them. Originally 20 persons were tried and convicted for the same offence and received a like sentence. 14 alone have appealed to this Court. The incident which took place on July 28, 1962 was theft by dacoity of certain cotton pieces from two carts within the limits of Lingsugur Police Station at about 11-30 p.m.

2. The facts are that two traders in cloth sent their wares in carts of sale. The cartman halted after the market was over on the way for food. Thereafter six carts left for Mudgal at about 10 p.m. When the carts reached a Nala called Hori Nalla about three miles from Lingsugur at about 11-30 p.m. 20 persons are said to have approached the carts and pelted stones. It was a dark night and the assailants were not identified. It appears that four out of the six carts escaped, but two carts were looted. The police investigated the case and arrested the 20 persons who were accused in the case as being the culprits involved in this incident.

3. It is not necessary to go into rest of the case or the evidence on which the case of dacoity was established, because dacoity as such is not challenged before us. The accused were convicted on the sole evidence of having in their possession pieces of cloth which were later identified to belong to the traders. Searches took place between July 30, 1962 and August 17, 1962. In these searches cloth which was undoubtedly stolen at the time of the dacoity was found in their houses. The High Court and the Court below from this the conclusion that the appellants were themselves the dacoits, and convicted them accordingly under Section 395 of the Indian Penal Code and sentenced them to 5 years' rigorous imprisonment and fine of Rs. 100/-.

4. In this appeal, the only contention raised by Mr. A. S. R. Chari is that the presumption that they were dacoits ought not to have been drawn since the circumstances do not admit the drawing of such a presumption in the case. According to Mr. Chari, the presumption to be drawn ought to have been one under Section 411 of the Indian Penal Code or at the most under Section 412 of the Indian Penal Code but not of complicity in the crime of dacoity. He contends that the circumstances under which the one presumption or the other may be drawn under Section 114 of the Indian Evidence Act have not been stated by law and therefore it is necessary always to start with the lesser presumption and draw the higher presumption only when there is some other evidence to show the complicity of the persons in the crime itself. According to him there is no other evidence in the case which points

to the complicity of the 14 appellants in the crime of dacoity and therefore as they cannot be suspected to be dacoits themselves, the only presumption to be drawn is one of receivers of stolen property or as receivers of property which was stolen in a dacoity.

5. In our opinion, the law advocated by Mr. Chari is not correct. If there is other evidence to connect an accused with the crime itself, however small, the finding of the stolen property with him is a piece of evidence which connects him further with crime. There is then no question of presumption. The evidence strengthens the other evidence already against him. It is only when the accused cannot be connected with the crime except by reason of possession of the fruits of crime that the presumption may be drawn. In what circumstances the one presumption or the other may be drawn, it is not necessary to state categorically in this case. It all depends upon the circumstances under which the discovery of the fruits of crime are made with a particular accused. It has been stated on more than one occasion that if the gap of time is too large, the presumption that the accused was concerned with the crime itself gets weakened. The presumption is stronger when the discovery of the fruits of crime is made immediately after the crime is committed. The reason is obvious. Disposal of the fruits of crime requires the finding of a person ready to receive them and the shortness of time, the nature of the property which is disposed of, that is to say, its quantity and its character determine whether the person who had the goods in his possession received them from another or was himself the thief or the dacoit. In some cases there may be other elements which may point to the way as to how the presumption may be drawn. They need not be stated here for they differ from case to case. In the present case, the goods stolen were a large quantity of cloth taken for sale to the market. These goods were number of persons said to be 20 in number pelted stones at the cartman and looted the property. Immediately afterwards a number of searches were made and the goods were found with various persons who were prosecuted as offenders and they have been presumed to be involved in the dacoity itself. It may be noticed that from each person a large number of goods of the same type such as 20 choli pieces or ten pieces of cloth were found. It is impossible to think that within the short time available, these goods could have been easily disposed of to receivers of stolen property or could be placed in the easily disposed of to receivers of stolen property or could be placed in the custody of friends till such time as the original offenders could take them away. The time gap in some cases is as short as two days and in some others it is not more than five days. In two cases only the time gap is about 19 days. Even then we think that the time gap is too short for original offenders to have disposed of the property to these appellants or to have left the goods in their custody till such time as the original offenders could have taken them away.

6. We are, therefore, satisfied that the proper inference was drawn in this case. It must not be forgotten that the offence was committed at night by as many as 20 persons or more. The houses of 20 persons were searched and large quantities of the stolen goods were found in their houses. It is impossible to think that these 20 persons were merely receivers of stolen property from some other 20 person who were the dacoits. It is legitimate therefore to raise the presumption in this case that the persons with whom the goods were found were the dacoits themselves. This presumption has been drawn and in our opinion rightly in this case. The conviction was therefore correct in all the circumstances of the case.

7. As regards the sentence, the offence no doubt was serious. But no injury beyond one appears to have been caused. Therefore we think that a sentence of three years' rigorous imprisonment will meet the ends of justice in this case. The sentence is reduced to three years' rigorous imprisonment. The sentence of five will stand. The appeal is allowed to this extent.

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