**SUPREME COURT OF INDIA**

Liyakat Mian

Vs.

State of Bihar

Crl.A.No.280 of 1968

(A. Alagiriswami, I. D. Dua and C. A. Vaidialingam, JJ.)

21.12.1972

**JUDGEMENT**

**DUA, J.:-**

1. The four appellants in this appeal by special leave were committed to stand their trial in the Sessions Court for an offence under Section 395, I.P.C. for having committed a dacoity in the house of Hardeo Mahton in village Kursel, police station Hunterganj, District Hazaribagh in the State of Bihar. The learned Assistant Sessions Judge, Hazaribagh tried the case. Against Jashim Mian alias Sahajad Mian, appellant No. 2 in this Court (he was accused No. 2 in the trial Court) a new additional charge was framed by the trial Court under S. 307, I.P.C. for the offence of attempt to murder Burhan Mahaton. This appellant had during the course of dacoity fired a gun-shot at Burhan Mahton thereby causing him injuries on the abdomen and left arm. According to the trial Court had Burhan Mahton died with the gun-shot injuries then accused No. 2 would have been guilty of murder. On this view an additional charge under S. 307, I.P.C. was framed against the second accused. The dacoity in question had taken place on the night between 11th and 12th April, 1964. The trial Court held both the charges proved and convicted the four accused under S. 395, I.P.C. sentenceing each one of them to rigorous imprisonment for nine years. Accused No. 2 Jashim Mian was in addition convicted under S. 307, I.P.C. and sentenced to rigorous imprisonment for nine

years. Both the sentences in his case were directed to run concurrently. The High Court in appeal, after exhaustively considering the points raised before it, agreed with the conclusions of the trial Court and dismissed the appeal preferred by the four convicted persons.

2. Before us Shri Harbans Singh, appearing in support of the appeal, has streneously contended that the evidence on the record does not establish the guilt of the appellants. The elaborate arguments addressed by him when properly scrutinised merely suggest that the evidence on the record has been wrongly appraised and that the evidence of the eye-witnesses should have been discarded as unacceptable or should at least have been considered to be inconclusive and the possibility of reasonable doubt about the culpability of the appellants could not be excluded on proper appreciation of this evidence.

3. We do not think it is open to this Court on the fact and circumstances of this case to reappraise the evidence for itself in order to come to its independent conclusions, ignoring the conclusions of the two Courts below. As a normal rule this Court does not proceed to review the evidence in criminal appeals under Art. 136 of the Constitution, despite its apparent broad phraseology, unless there is some serious legal defect or a grave irregularity is committed by the Court below in reading the evidence and such illegality or irregularity has resulted in miscarriage of justice. Generally speaking, this Court is averse and discinclined to interfere under this Article except when the trial is vitiated by some illegality or irregularity of procedure or the trial has been held in violation of rules of natural justice. The defects in the trial or irregularity of procedure attracting this Court's power of interference under this Article may, inter alia, relate to misreading of evidence or pertain to illegal or erroneous admission or exclusion of evidence, but such defects or errors must cause failure of justice. A mere technical defect or error of inconsequential nature does not call for interference. This reserve of power, though expressed in language of the widest magnitude, is essentially meant to be invoked only in exceptional cases when this Court feels that justice has failed as a result of the said defects or of unduly excessive hardship or wholly misplaced leniency. It is neither possible nor desirable to lay down any rigid test capable of covering all conceivable cases. The Constitution has left it to the judicial discretion of this Court depending on the soundness of its traditional sense of justice to determine in each case whether or not the interest of substantial justice demands interference. One thing is, however, clear : this Article does not confer an unrestricted right of appeal on any party to claim the reopening of all questions of fact and law where none exists otherwise.

4. In the case in hand, according to the prosecution version, at midnight between the 11th and 12 April, 1964 Burhan Mahton alias Burho Mahto (P.W. 11) son of Hardeo Mahton (P.W. 15) was sleeping on a cot in courtyard of his house in village Kursel, police station Huntergunj, district Hazaribagh, while his two wives Most. Rajmatia (P.W. 3) and Most. Tushia (P.W. 13) and his mother were sleeping elsewhere in the same house. On hearing some noise of breaking of tiles Burhan Mahaton woke up but was caught by two dacoits Jashim alias Sahajad Mian and Liyakat Mian (Appellans in this Court) who instantaneously threw on him flash light from their torches and also pounced upon him from the roof. Jashim alias Sahajad also fired gun-shot at Burhan Mahaton thereby wounding him. His aged mother, however, immediately removed him to another portion of

the house. On alarm being raised by the other inmates of the house other villagers and Hardeo Mahton (P.W. 15) father of Burhan Mahton, arrived at the spot. In the meantime the dacoits who were about 8 or 10 in number had collected their booty, also removing certain ornaments from the persons of the womenfolk in the house. Burhan Mahaton was, thereafter taken by his father to Jori Hospital where he was administered first aid but was advised to be taken to a bigger hospital because of his serious condition. He was then taken in the car of Bhupendra Kumar (P.W. 2) to Gaya Hospital. On the way to Gaya Hospital first information report was lodged at the Huntergunj police station at about 5 a.m. on April 12, 1964. The same day at about 1.25 p.m. the dying declaration of Burhan Mahton, the injured person, was recorded in Gaya Hospital by Dr. Sri Bihari Sinha (P.W. 4). In this dying declaration the name of Liyakat son of Jafri Mian (one of the appellants in this Court) was expressly mentioned as one of the two dacoits who had jumped from the roof and had a scuffle with Burhan Mahaton, when he was trying to go out. The other dacoit who had also jumped from the roof was described as the son of Jainul Mian who had fired at him, the exact words of the dying declaration being "the son of Jainul Mian who lives at Ranchi assaulted me on my chest with something like gola."

5. The Committing Magistrate framed a charge under S. 395, I.P.C. against all the accused persons. In the trial Court, however, a further charge under S. 307, I.P.C. was framed against Jashim Mian alias Sahajad Mian (the second appellant in this Court) for having injured Burhan Mahaton with a gun-shot in an attempt to murder him.

6. The trial Court in a very exhaustive judgment held that Most. Tushia (P.W. 13) and Rajmatia (P.W. 3) the two wives of Burhan Mahaton had identified the four dacoits, including the two appellants (in this Court) in the torch light flashed by them. In its opinion Burhan Mahaton had also identified the two appellants who had a scuffle with him. There was admittedly some enmity between the appellants Liyakat and Hardeo Mahaton (P.W. 15) as indeed there was also some criminal litigation between them in the form of proceedings under Ss. 144 and 145, Cr. P.C. This served as a motive for the dacoity. On this evidence charge under S. 395, I.P.C. was held to be fully established. In regard to the charge under S. 307, I.P.C. the trial Court was influenced by the fact that the doctor had considered Burhan Mahaton's condition was precarious and therefore a magistrate's services were requisitioned for recording his dying declaration. The evidence of Burhan Mahaton (P.W. 11) that Sahajad Mian son of Jainul had inflicted on him a gunshot wound corroborated by the testimony of Rajmatia (P.W. 3) and Tushia (P.W. 13) was held sufficiently convincing by the trial Court. The charge under S. 307 was accordingly also held to have been fully proved. As already noticed the trial Court sentenced all of them to 9 years rigorous imprisonment under S. 395, I.P.C. Jashim Mian was also sentenced to undergo rigorous imprisonment for 9 years under S. 307 I.P.C. The sentences were to run concurrently in his case.

7. On appeal the High Court was impressed by the fact that P.W. 15 Hardeo Mahaton had made no attempt to implicate the appellants falsely because if he had wanted to do so there was nothing to prevent him from mentioning in his first information report that he had learnt from the womenfolk of the family that Liayakat and Jashim son of Jainul Mian were amongst the dacoits. In this connection it may be pointed out that in the first information report all that Hardeo Mahaton had

said was that the dacoits had been identified by the ladies in the house and they were in a better position to state about the identity of the dacoits. The High Court also believed the testimony of P.W. 11 (Burhan Mahaton) who as a result of the injuries inflicted on him had remained somewhat unconscious for considerable time. In the opinion of the High Court nothing had been elicited in his cross-examination which could induce it to disbelieve his statement about Liayakat and Sahajud son of Jainul being the two persons who had a scuffle with him. His dying declaration was considered by the High Court to be trustworthy and acceptable which fully corroborated his evidence in Court. His evidence against the appellant was also considered to be free from blemish. While dealing with the absence of the names of the dacoits in the first information report the High Court observed "neither P.Ws. 3 and 13 nor P.W. 15 could have been in such a frame of mind as to discuss about the names of the culprits before P.W. 15 had left for Jori Hospital with Barho in an unconscious condition". The criticism about the test identification parades also did not impress the High Court and it came to a positive conclusion that the test identification parade had been fairly held and that the claims of identification of the accused persons including Jashim Mian alias Sahajad Mian could safely be relied upon. It was on these findings that the High Court dismissed the appeal.

8. Quite clearly the conviction of the appellant is based on the concurrent conclusions of facts by the two Courts below based on appreciation of evidence both of which have relied upon the testimony of the eye-witnesses including P.Ws. 3, 11, 13 and 15. In so far as the question of the conviction of Jashim Mian is concerned the only point somewhat seriously pressed before us is that no offence under S. 307, I.P.C. can be considered on the present evidence to have been made out. The submission is not easy to accept. Burhan Mahaton was shot at by Jashim Mian alias Sahajad Mian from fairly close quarters. According to to Dr. K. N. Singh (P.W. 14) who had examined the injured person there were found on him multiple pellet wounds on the left half of abdomen with one big lacerated wound 1" x 2" x 3" by charring of skin and multiple pellet wounds with charring of skin on the left half of the left arm. Both injuries, according to him, had been caused by a fire-arm like a gun. Some pellets were actually extracted from the injuries of the injured person and some according to him were still in his body. It was this very doctor who had sent information to the police for making arrangement for recording Burhan Mahaton's dying declaration. Section 307, I.P.C. provides :

"307. Attempt to murder :

Whoever does any act with such intention or knowledge, and under such circumstances that, if he by that act caused death, he would be guilty of murder, shall be punished with imprisonment of either description for a term which may extend to ten years and shall also be liable to fine; and if hurt is caused to any person by such act, the offender shall be liable either to imprisonment for life, or to such punishment as is hereinbefore mentioned.

When any person offending under this section is under sentence of imprisonment for life, he may, if hurt is caused, be punished with death."

Now by this act of shooting at Burhan Mahaton from such close quarters, had Jashim Mian caused Burhan Mohaton's death, then, he would certainly have been guilty of murder. His guilt is thus quite clearly established on the plain language of S. 307 and on the reasonable consequences which must be assumed to flow from the act of shooting indulged in by him. Knowledge to this effect can legitimately be imputed to him. This submission is therefore, wholly unacceptable.

9. For the reasons foregoing the appeal of all the appellants must fail and the same is dismissed.

Appeal dismissed.