

Naba Kumar Das

Vs

State of West Bengal

Criminal Appeal No. 89 of 1970

(Y. V. Chandrachud, S. N. Dwivedi JJ)

14.11.1973

JUDGMENT

CHANDRACHUD, J. -

1. A dacoity took place in the house of one Balaram Naskar of Nimerhati on the night between the 7th and 8th November, 1967. Eight persons including the appellant were put up for trial before the learned Additional District and Sessions Judge, Howrah, for offences of various description arising out of the dacoity. The learned Judge acquitted all the 8 accused. In an appeal by the State the High Court upheld the acquittal of 7 persons but convicted the appellant under Section 411 of the Penal Code and sentenced him to rigorous imprisonment for 2 years. This appeal by special leave is directed against that judgment.

2. The conviction recorded by the High Court rests on the discovery of a wrist watch and four 'churis'. The case of the prosecution is that the wrist watch and the churis were stolen during the course of the dacoity and that they were ultimately traced to the appellant. Having considered the evidence in regard to the discovery of these articles we are of the opinion that the High Court was not justified in interfering with the order of acquittal passed by the trial Court.

3. The wrist watch is of Cyma make and the evidence in regard to its identity may be accepted as true. But the evidence in regard to the circumstances in which it was discovered is open to grave doubt. It is wrong to say that the watch was seized from the appellant because it was one Dr. Harendra Nath Mondal who produced the watch, handed it over to the appellant in the presence of the police and it was thereafter that the police went through the formality of seizing it from the appellant. The seizure list in regard to the watch is attested, apart from Dr. Mondal by 3 witnesses, Ram Kumar Singh, Kali Pada Sani and Dharendra Nath Das. None of these witnesses supported the discovery of the watch though it is not possible to accept their testimony that they only signed a blank piece of paper.

4. The churis were discovered from the appellant's shop and that seizure is attested by the same 3 witnesses, Ram Kumar Singh, Kali Pada Sani and Dharendra Nath Das. These witnesses have not supported the seizure of the churis either.

5. In these circumstances the High Court was driven to rely on the sole testimony of the Circle Inspector, S. Dutta. In paragraph 11 of its judgment the High Court observes that the conclusion of the trial Court should not be lightly disturbed, but the High Court thought that the trial Court had not considered the evidence of the Circle Inspector in 'proper perspective' and therefore the conclusion of the trial Court could not be upheld. We find ourselves wholly unable to accept the

view of the High Court.

6. The Circle Inspector, at the least, did not bring to bear enough care in the discharge of his functions. The churis which were produced before the Court are bronze-based but he wrote 'brass' for 'bronze'. Instead of mentioning in the seizure memo that 4 'churis' were seized from the appellant's shop, he mentioned that 4 'bangles' were seized. Both the learned Counsel who are familiar with local conditions are agreed that in Bengal a distinction is made between churis and bangles. The explanation of the Circle Inspector that he committed a mistake in describing the articles may or may not be true but the fact that he made a significant error in a material part of the description of the articles seized by him shows that no implicit reliance can be placed on his word. It also seems to us important that the churis, after seizure, were wrapped in a loose sheet of paper and were not kept under seal.

7. Thus, the only evidence in support of the seizure of the wrist watch and the churis is that of the Circle Inspector. For reasons aforesaid, that evidence fails to inspire confidence. We must therefore set aside the order of conviction and sentence and restore the order passed by the trial Court.

8. CrI. M.P. No. 1419 of 1973 was filed on behalf of the State for a re-hearing of this appeal, but we found no substance in it and have rejected it.

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