

BOMBAY HIGH COURT

Ganu Chandra Kashid

Vs

Emperor

(Beaumont, C.J. Broomfield, J.)

17.11.1931

JUDGMENT

Beaumont, C.J.

1. This is an appeal by ten accused persons against their convictions for dacoity under Sections 396 and 402 of the Indian Penal Code by the Sessions Judge of Sholapur. The dacoity took place on January 18, 1931, and the property stolen consisted mostly of cash.
2. The prosecution evidence is that about Rs. 1,700 were lost in the dacoity of which the great bulk consisted of one rupee coins though there were a certain number of coins of smaller denomination. A certain amount of other property was also lost, but most of the property was cash. The owner of the house where the dacoity took place, Daryappa, was so injured by the dacoits that he died ten days later.
3. The evidence consists in the first place of the story of an approver and the confessions of three accused, viz., Nos. 1, 8 and 9, which story and confessions inculcate all the accused, and we have to look at the evidence against the several accused in order to see whether the story of the approver is corroborated, and, in the case of those accused who did not confess, whether the story of the approver and the confessions of the co-accused are corroborated.
4. Now the principal evidence of corroboration is the production of stolen property by the several accused. I will deal with the particular property produced by the different accused later, but there is a preliminary point which is raised, and which has to be disposed of, as to the admissibility of statements made by the accused when the property was produced. According to the evidence of the panch witness Ex 19 each of the accused, except accused No. 9, first gave information that he would point out the place where his share of the property stolen in the Dahiwadi dacoity case was buried and offered to produce the same. Now the learned Judge has admitted the whole of that statement under Section 27 of the Indian Evidence Act, because he says that the information first gave the Police notice that all the property was stolen, and led up to the production of the

property. Now the construction of Section 27 of the Indian Evidence Act may in a good many cases I think involve difficulty. The section is, both in form and in substance, a proviso on the preceding sections. Section 25 provides that no confession made to a Police Officer shall be proved as against a person accused of any offence. Then Section 26 makes an exception in respect of a confession recorded before a Magistrate, and then Section 27 introduces another exception and provides that when any fact is discovered as discovered in consequence of information received from a person accused of any offence in the custody of a Police Officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved. The fact discovered within the meaning of that section must, I think, be some concrete fact to which the information directly relates, and in this case such fact is the production of certain property which had been concealed. Now if an accused gives information to the Police in a form which divides such information under several heads, the case is simple. Supposing he says: There was a dacoity committed at such and such a place on such and such a date; I took part in it, I received certain property as my share; and my share of the property is buried at a place which I will show you.

5. It is, I think, quite clear that of such information it is only the last sentence, dealing with the place where the property is buried, which is admissible under Section 27, and the other statements are not admissible as confessions, having regard to Section 25. But supposing the accused, as the accused would appear to have done in this case, gives his information in the form of a compound statement, the position is not so clear. Suppose he says: I will produce the share which I received in such and such a dacoity.

6. The Police Officer to whom that statement is made is not at liberty himself to dissect it and give evidence of part of it only. He can only state the fact of what information was given to him. But it seems to me that when the Judge gets the evidence of that information, he must, before he records it as evidence or leaves it to the Jury, divide the sentence into what are really its component parts, and only admit that part which has led to the discovery of the particular fact, viz., the hidden property. I think the Judge must have regard to the fact, that the information, expressed as it is in a single sentence, really involves first an admission that there was a dacoity, secondly an admission that the accused took part in it, thirdly an admission that he got part of the property and fourthly a statement as to where the property is. The first three parts of the dissected sentence are not admissible in evidence, but the fourth part is. That seems to me to be the effect of Sections 25 and 27 read together, and I think that such a construction is justified by the decision of a full Bench of this Court in *Empress v. Nana* 14 Bom. 260 (F.B.). I think, therefore, that the learned Judge was not correct in treating the whole of the statement, which the panch attributes to the accused as being relevant evidence, and that he ought only to have treated that part as relevant which shows that the accused had hidden property which they were willing to

produce. The evidence that the property formed part of the stolen property must be locked for elsewhere than in the statements of the accused. I propose, therefore, to deal with the evidence on this basis.

7. There is one other general observation which I will make about the evidence. According to the approver and all the three confessing accused the share of each of the dacoits came to approximately Rs. 90. The stories do not agree as to the exact amount but they vary only between Rs. 88 and Rs. 93, so that according to the stories each accused got Rs. 90 or thereabouts. The evidence is that practically all the accused either produced or accounted for about Rs. 90, and that the money was produced mainly in rupee coins, and the cumulative effect of all the accused producing just about the amount of their alleged respective shares in the dacoity, and producing it in the form in which the money was stolen, must, I think, have weight with us in deciding whether the story of the approver and the three confessions are true or not. But one has to remember that in the case of each accused the corroboratory evidence must be such as serves to identify the accused with the offence. It is very easy for an approver who took part in an offence to give a substantially correct statement of how the offence was carried out, and the statement may be perfectly correct as to the names of (say) ten persons who are said to have taken part in the offence; but it may be that there are incorporated into the statement the names of one or two persons who really did not take part in the offence, but against whom the approver has feelings of enmity. Therefore it is not enough to say that we think that the general truth of the approver's story is established. We must be satisfied that as against each accused there is some corroboratory evidence which shows that that accused took part in the dacoity.

8. Now with those preliminary observations I will deal very shortly with the case of each of the accused.

9. So far as accused No. 1 is concerned I see no reason to think that his confession is not true. He produced Rs. 90 and he also produced a bodice which was identified as part of the stolen property. I think there is clear evidence of corroboration against him.

10. Accused No. 2 produced various articles which were stolen and which have been identified as part of the property stolen in this dacoity. It was also shown that he had recently made a loan of Rs. 80 to Ex. 29 and I think there is no question about his guilt.

11. Accused No. 3 produced a purse with Rs. 180 in it, most of that amount being in single rupees though a small amount was in coins of smaller denomination. According to the confession of accused No. 1, accused No. 3 did receive a double share because he received the share of accused No. 4 who is his brother. Accused No. 3 has, therefore, produced approximately the sum which accused No. 1 says he got. In the committing Magistrate' Court he denied the production

altogether, and in the Sessions Court he said that the money was his own, but he calls no evidence to show how he collected this large sum of rupee coins. The purse in which the coins were found was also identified as being part of the property stolen in this dacoity, and I think therefore the case against accused No. 3 is proved.

12. With regard to accused No. 4 there is really no corroboration against him except the fact that accused No. 3 produced a double supply of cash, which according to the confession of accused No. 1 includes accused No. 4's share. I do not think that is sufficient corroboration, and I think that accused No. 4 must be discharged.

13. Accused No. 5 produced an article Ex. 37 which has been sufficiently identified as part of the stolen property. He also produced a sum of Rs. 44 and there is evidence that he had, since the dacoity, purchased a pony for Re. 40. I think that there is sufficient corroboration against him.

14. Accused No. 6 has produced Rs. 93 which is the exact sum which accused No. 1 says that he got. He denied before the Committing Magistrate that he produced the money at all, and in the Sessions Court he said, as the Judge points out in his judgment that his father produced the property, but I agree that that is a story which it is impossible for anybody to accept. I think therefore that the case against him is established.

15. With regard to accused No. 7 he produced certain articles, but they have not been proved to be part of the stolen property. He was seen by Exs. 17 and 18 in conjunction with other accused on the day of the offence. Exhibit 18 is a porter at Javle Station and he says that he saw accused Nos. 1, 7, 8, and 9 taking train to Sangola on the day of the offence and Ex. No. 17 saw accused Nos. 1, 2, 3, 6, 7, 8, 9 and 12 together on the afternoon of the day of offence at Sangola. Accused No. 7 also produced Rs. 190-12-0. Rs. 179 of that amount being in rupee coins, and according to the confession of accused No. 1, he did receive not only his own share of the cash but also the share of accused No. 8 who is his brother. There is one witness Ajijbi, Ex. 46, who speaks of a conversation which appears to affect accused No. 7, but I reject that evidence entirely as I think it is hearsay. Apart from that evidence I think the evidence of Exs. 17 and 18 coupled with the production of this large sum of cash which is not accounted for is sufficient corroboration as against this accused.

16. With regard to accused Nos. 8 and 9 I see no reason to reject their confessions. Accused No. 9 produced a sum of Rs. 88-4-0 which he said was his share in the dacoity.

17. With regard to accused No. 12 no property was produced. The learned Judge says that the case against him is corroborated by the evidence of Ajiji, Ex. 46, but I think there is some mistake there as that evidence appears to be directed against accused No 7. The evidence, as I

have already stated, is pure hearsay, and it seems to me that there is no corroboration against accused No. 12, and his appeal must be allowed.

18. In the result I think the appeals of accused Nos. 1, 2, 3, 5, 6, 7, 8 and 9 must be dismissed subject to this that we propose to alter their sentences. Numbers 1 to 6 and 9 were sentenced to ten years' rigorous imprisonment and fine of Rs. 500 each, in default further two years' rigorous imprisonment. We think it is not really a case in which a fine should be inflicted. It is obvious that the parties are not in a position to be able to pay such a fine. It really means that the sentences will be twelve years' rigorous imprisonment each. It was a bad case of dacoity in which a man was killed, but we think that ten years' rigorous imprisonment is sufficient sentence, and we therefore propose to strike out the sentence of fine. Accused No. 7 was sentenced to transportation for life on the ground that he was the ring leader, but we see no ground on which his case can really be distinguished from that of the other persons primarily concerned, and we alter his sentences to ten years' rigorous imprisonment. Accused No. 8 was sentenced to five years' rigorous imprisonment and a fine of Rs. 500. It is, I think, clear from his confession and from the rest of the evidence, that he took only a minor part in the affair. He was with the other dacoits, but he kept away from the actual scene of the dacoity and guarded the cart which they brought with them, and, though he knew that a dacoity was being committed he was not responsible for the violence which was used and which resulted in the death of one man. We think that a sentence of two years' rigorous imprisonment will be sufficient punishment for him. We therefore reduce his sentence to one of two years' rigorous imprisonment. Accused Nos. 4 and 12 will be acquitted and discharged.

Broomfield, J.

19. I agree that except in the case of accused Nos. 4 and 12 there is sufficient corroboration of the evidence of the approver considered along with the confessions of accused Nos. 1, 8 and 9 to justify the conviction of the accused. I also agree with the modifications which the learned Chief Justice proposes in the sentences.

20. I only desire to add a few remarks as to the admissibility of certain statements alleged to have been made by the accused while in Police custody, and as to the value which ought to be attached under the circumstances of the case to the production of certain sums of money by the accused as corroboration of the evidence given by the approver. The statements which the accused are alleged to have made have been deposed to by the panch witness as follows: Every accused, except Accused No. 9, first gave us information that he would point out the place where his share of the property stolen in the Dahiwadi dacoity case was buried and offered to produce the same.

Mr. Abhyankar for the accused has argued, as I understand him, that the whole of these

statements should have been excluded. He referred us to two authorities, *Reg v. Jora Hasji¹ and Emperor v. Shivputraya²* These were both cases in which the provisions of Section 27 of the Indian Evidence Act were considered. In the former case Mr. Justice West said (page 244 Page of 11 B.H.C.R.--[Ed.]): Whatever be the nature of the fact discovered, that fact must, in all cases, be itself relevant to the case, and the connection between it and the statement made must have been such that that statement constituted the information through which the discovery was made, in order to render the statement admissible. These propositions are doubtless perfectly correct. The difficulty is in their application to concrete cases, and the particular statements of which Mr. Justice West gave examples were not such as to cause the same difficulty that we have found in this case. In such a statement as "You will find a stick at such and such a place; I killed Rama with it," it is very easy to separate the part of the statement which is incriminating from the part of the statement which led to the discovery of the fact and say that the former part must be excluded and the latter only admitted. I do not, however, find anything in this case or in the case of *Emperor v. Shivputraya³* which necessarily implies that a statement such as the one we have to deal with here ("I will produce my share of property stolen in the dacoity") is barred by Section 27.

21. A much more important case in that connection is the Full Bench decision in *Queen Empress v. Nana* 14 Bom. 260 (F.B.). The statements which the court considered in that case were these:-- The accused was asked where the property was. He said in reply: "Yes, I have kept it I will point it out. I have buried it in the fields." He also made a second statement at the time of pointing out the property to the effect that he had buried it there. Of all these statements the only one which the court held to be admissible was the first statement that he had buried the property in the fields. That was admitted on the ground that it set the Police in motion and led to the discovery of the property. Even the accused's statement that he had kept the property was held to be inadmissible on the ground that it was not necessarily connected with the fact discovered. With respect, I agree with the reasoning in this judgment, and I think on the authority of it we ought to hold that the only part of the statements of the accused in this case which can be admitted under Section 27 is the statement that they would point out the places where the property was buried. The words "their share of the property" and the words "stolen in the Dahiwadi dacoity" must be excluded on the ground that they are not necessarily connected with, and do not distinctly relate to, the discovery of the property.

22. In my opinion, however, the prosecution case is not materially weakened by the fact that these latter statements of the accused cannot be looked at. The fact of the production of these sums of money is of course admissible as conduct under Section 8 of the Act, and if the fact of production is admissible, then the circumstances in which the production took place are also relevant under Section 9. It is probable that if the Judge had excluded these statements made by

the accused, the evidence given by the investigating Police-Officer Ex. 58 and the panch Ex. in would have been in a slightly different form. Care would have been taken to bring out more clearly than has actually been done the circumstances in which the property was produced. But even as it is, it seems to me perfectly clear when we read the evidence of these witnesses that what really happened was this. The accused persons having been arrested by the Police, who had reason to believe that they had taken part in this dacoity, pressure was put upon them to produce the property which had come into their hands, and they thereupon produced these sums of money on the footing that it was their share of the booty. The evidence, in my opinion, is entirely Inconsistent with any theory that the accused merely pointed out certain sums of money which happened to be concealed in their houses or their fields. In that connection it is also very material to bear in mind that when some months after this the accused were examined before the Committing Magistrate they did not even then allege that the money belonged to them; they either declined to make any statement or in most cases they denied having produced any property at all. It was not until they came to be examined in the Sessions Court in July that they put forward for the first time the defence that this money belonged to them. It is not likely that persons in the position of the accused would possess such considerable sums of money and in no case has a satisfactory explanation been given as to how they came by it.

23. According to the approver each of the dacoits, for his share of the stolen money, received the sum of Rs. 92-8-0. According to the confession of accused No. 1 the share of each amounted to Rs. 95. According to the confession of accused No. 9 each of them got Rs. 88-4-0. But he said "on account of it being dark some got a little more and some a little less." If this evidence as to the production of money had been an isolated item of evidence affecting only one or two of the accused, it might not have been regarded as very strong corroboration of the approver's story. But what we find here is that accused No. 1 produced a sum of Rs. 90, having already according to him spent Rs. 3. Accused No. 2 did not actually produce any money but there is evidence that shortly before his arrest he had lent a sum of Rs. 80 to witness Ex. 29. Accused No. 3 produced the sum of Rs. 180, he according to the approver having received two shares, one for himself and one for his brother accused No. 4. Accused No. 5 produced the sum of Rs. 44-10-0, and there is evidence that shortly before his arrest and after the dacoity he had purchased a pony for Rs. 40. Accused No. 7 produced Rs. 190-12-0, that being, according to the approver, his own share plus the share of his brother accused No. 8, and accused No. 9 produced the sum of Rs. 88-4-0. The latter in his confession expressly stated that that sum of Rs. 88-4-0 was the amount which he got as his share of the stolen money. It would be an extraordinary series of coincidences that these sums of money, tallying so closely with what according to the approver and the confessions represented the shares of the respective dacoite, should be found hidden in the possession of these various accused. In effect the evidence amounts practically to an identification of the

money and is, in my opinion, strong corroboration of the evidence of the approver, sufficient to justify the conviction of the accused even in the case of accused No. 6, where there happens to be no other corroboration.

Cases Referred.

11 B.H.C.R. 242

2126 Ind. Cas. 876 : 32 Bom. L.R. 574 : A.I.R. 1930 Bom. 244 : 31 Cr. L.J. 1104 : Ind. Rul. (1930) Bom. 444 : (1930) Cr. Cas. 696.

3126 Ind. Cas. 876 : 32 Bom. L.R. 574 : A.I.R. 1930 Bom. 244 : 31 Cr. L.J. 1104 : Ind. Rul. (1930) Bom. 444 : (1930) Cr. Cas. 696