

## APPELLATE CRIMINAL.

Before Skemp and Beckett JJ.

ISHAR SINGH—Appellant,

*versus*

THE CROWN—Respondent.

1938

July 6.

Criminal Appeal No. 521 of 1938.

*Indian Penal Code (Act XLV of 1860), SS. 302, 458, 149 — Confession — self-exculpatory — when it is not — Admissibility of — against co-accused — Murder during dacoity — Primary object — Intention.*

*Held*, that where the accused admitted having taken part in the dacoity and being a member of the unlawful assembly which had set out with the object of committing dacoity, and he was present when the murder was committed, the confession cannot be said to be self-exculpatory.

*Held* also, that the evidential value of a confession made by a co-accused is not very high, but where, as in the present instance, the confession leads to the arrest and identification of the other accused, it stands confirmed and should be taken as a substantially true statement.

*Held further*, that where the dacoits set out armed with such lethal weapons as *chhavis* and spears and murder was committed in the course of dacoity it is hardly relevant to say that the primary object of the dacoits was to obtain loot and that they only intended to commit murder if this was found to be desirable in their own interests.

*Appeal from the order of R. B. Bhagat Jagan Nath, Sessions Judge, Montgomery, dated 6th April, 1938, convicting the appellant.*

*Nemo*, for Appellant.

MAURICE, for Advocate-General, for Respondent.

The judgment of the Court was delivered by—

BECKETT J.—Jhanda Singh, Fatta Singh and Ishar Singh have been convicted of the offence of being

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members of an unlawful assembly at the time when murder was committed in prosecution of the common object of the assembly and have been sentenced to transportation for life by the Court of Session. They have also been convicted of the offence of house-breaking by night after preparation for hurt and have been sentenced to rigorous imprisonment for ten years, the sentences to run concurrently. They have now appealed to this Court.

According to the prosecution story the accused formed part of an assembly of seven persons who invaded the village of Kot Karam Chand in the Lahore District on the night between the 6th and 7th August, 1937, with the intention of committing dacoity. They were armed at the time of their arrival with various lethal weapons. They entered the house of Shankar Das by climbing over a wall, but made a noise in doing so and awoke Shankar Das, who immediately raised an alarm. Shankar Das tried to escape through a window but was dragged back and was given a severe beating. His alarm, however, had aroused other persons. The dacoits then came into the courtyard and used force to disperse the persons who were assembling outside. One of these persons, Ram Singh, received a spear blow on the chest from which he died on the spot. The dacoits then made their escape.

Suspicion eventually fell upon one Kapur Singh, and the residents of a colony village near Pattoki were asked to look out for him. A day or two after this information had been received Pala Singh of that village saw Kapur Singh near the shop at Wan Radha Ram and succeeded in arresting him with the help of other persons present at the shop. Kapur Singh then

confessed that he had committed a dacoity at Kot Karam Chand along with Fatta Singh, accused, and certain other persons. He stated that two of the dacoits came from village Anjra but that he did not know their names. This confession was subsequently repeated in greater detail before a Magistrate and the record of this confession has been produced in evidence as exhibit P. W./1.

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Steps were then taken to have the accused identified after they had been arrested. Kapur Singh himself was identified at a parade held on the 19th August, 1937, at Montgomery by two of the eye-witnesses, Guran Ditta and Ramzan. Jhanda Singh was next arrested and was identified at a parade at Montgomery on the 4th September, 1937, by four witnesses Shankar Das, Maya Das, Guran Ditta and Narain Singh. There was a third parade on the 17th September, 1937, at which Fatta Singh and Ishar Singh were produced for identification. Fatta Singh was identified at this parade by two witnesses, Shankar Das and Maya Das, while Ishar Singh was also identified by two witnesses Shankar Das and Ramzan. Guran Ditta was not able to attend this parade and the same two accused were produced at the fourth parade on the 23rd September, when Guran Ditta identified Fatta Singh alone.

The present accused were convicted at the Court of Session on the strength of this identification alone. It is in evidence that a large lantern was burning in the courtyard of Shankar Das while the dacoits carried electric torches of which they were making use. It is also in evidence that the dacoits were making no attempt to conceal their faces. It is true, as the accused themselves pointed out, that an electric torch

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does not usually throw light on the person who is carrying it; but if the lights were being used in the confused mêlée which occurred when the dacoits left the courtyard, there was no reason why these lights should not have shown up other persons in the party. There was evidently enough light for the dacoits to see what they were doing in the courtyard, as the sequence of events shows.

There is no reason to suppose that the four identification parades were not properly conducted. It is to be observed that some of the witnesses admitted that they were unable to recognise the persons they were called upon to identify; and as pointed out by the learned Sessions Judge, it is further to be noticed that the witnesses were generally able to identify those persons with whom they had been at close quarters during the course of the struggle.

This is not the only evidence against the accused, however. There are also the confessions of Kapur Singh who was sent up for trial along with the other accused but was acquitted. These confessions were rejected in the trial Court for reasons which seem to us to be inadequate. The main reason for refusing to take these confessions into consideration is that Kapur Singh took pains to exculpate himself. There is no suggestion in the evidence that Kapur Singh made any attempt to exculpate himself when he admitted having taken part in the dacoity before the villagers who seized him at Wan Radha Ram. Nor is the confession made before the Magistrate exculpatory so far as it concerns the offence with which the accused have been charged and convicted. Kapur Singh admitted that he had been a member of the unlawful assembly which had set out with the object of committing dacoity in the house of Shankar Das and

that he was present when the murder was committed, thereby putting himself on exactly the same footing as the other accused. He merely stated that he had taken no personal part in the theft or the assault. As a matter of fact no theft was committed, on account of the alarm which was raised, and none of the appellants is supposed to have taken any direct part in the murder. It seems to us quite incorrect to say that Kapur Singh was throughout trying to save his own skin as appears in the judgment of the Sessions Court, for his statement contains all the facts required for a conviction under the present charges.

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Curiously enough, the learned Sessions Judge appears to have accepted the statement of Kapur Singh as substantially correct, saying that he is inclined to believe that Kapur Singh showed the house to the dacoits and might have been taken along by them inside the house, but that he was not probably there of his own free will. There is nothing in the statement to support this last suggestion; on the contrary, his confession indicates that Kapur Singh was a willing member of the party and he himself states that he entered the courtyard by scaling over the wall with the rest. It is unlikely that he would have incriminated himself to such an extent if he had been brought there only under threats, and he would have certainly not admitted entering the courtyard if he had any intention of exculpating himself. It is the fact that he definitely incriminates himself quite as seriously as any other person in the party (except the person who killed Ram Singh) which renders his confession admissible in evidence. The evidential value of a confession made by a co-accused is not very high: but in the present instance the confession receives confirmation from the fact that it led to the arrest and

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identification of the other accused. If it is held that the present appellants were properly identified, as the learned Sessions Judge has done, it seems clear that Kapur Singh was making a substantially true statement.

There is one other passage in the judgment of the Sessions Court which calls for comment. In giving his reasons for not imposing the full penalty under section 302, the learned Sessions Judge has merely remarked that murder was not the primary object of the dacoits and that the appellants did not themselves strike the fatal blow on Ram Singh. When murder is committed in the course of a dacoity and it is proved that the dacoits set out armed with such lethal weapons as *chhavis* and spears, it seems to us hardly relevant to say that the primary object of the dacoits was to obtain loot and that they only intended to commit murder if this was found to be desirable in their own interests. The evidence shows that the party of dacoits used their weapons in a reckless manner which might have easily resulted in death apart from the injury inflicted on Ram Singh. The possibility, or even probability of death being caused must have been prominent in the mind of each member of the party from the time when they set out armed with lethal implements. We consider that the accused are fortunate to have escaped the full penalty; but there is no petition for enhancement of the sentence by the Crown, and we confirm the convictions and sentences and dismiss the appeals.

A. K. C.

*Appeals dismissed.*