(2002) 06 KL CK 0068

High Court Of Kerala

Case No: C.R.R.P. No. 897 of 1994

Nijamudeen		APPELLANT
	Vs	
State of Kerala		RESPONDENT

Date of Decision: June 21, 2002

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 313
- Penal Code, 1860 (IPC) - Section 302, 402

Citation: (2002) CriLJ 3266

Hon'ble Judges: M.R. Hariharan Nair, J

Bench: Single Bench

Advocate: Pirappancode V. Sreedharan Nair, for the Appellant; T.K. Latiff, Public Prosecutor, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

M.R. Hariharan Nair, J.
The challenge in the revision is with regard to the conviction entered against the petitioner as 4th accused in SC 144/1993 of the Principal Assistant Sessions Court, Trivandrum, which was confirmed by the Third Additional Sessions Judge, Trivandrum in Crl. A. 245/1993.

2. The prosecution alleged that at about 3.30 a.m. on 23-2-1993, the six accused in the case were found assembled in front of the outer gate of the office building of the goods transport near Thampanoor Overbridge, Trivandrum and that their presence was for the purpose of committing dacoity. Though the petitioner and the other accused denied the charges, they were found guilty of the offence u/s 402 of the I.P.C. and sentenced to undergo R.I. for three years each.

3. There is nothing to show that the other accused in the case have filed any appeal or revision and hence this appeal was heard separately.

4. Sri. Pirappancode V.S. Sudheer, who appeared for the petitioner submitted that the court has proceeded to convict the petitioner based on assumptions and not based on any legal evidence. According to him for sustaining the conviction u/s 302 of the I.P.C. the prosecution is bound toV show, besides the fact that the petitioner Was one of six persons assembled there, that such assembly was for the purpose of committing dacoity and there is absolutely no evidence available in the case to establish the latter aspect.

5. On the arguments advanced in the case, the points that arise for decision are:-

(1) Whether there is reliable evidence to find that the accused has committed the offence u/s 402 of the I.P.C.?

(2) Whether the conviction and the sentence imposed on the petitioner deserves to be set aside?

6. Point No. 1:-Section 402 of the I.P.C. reads as follows:-

Assembling for purpose of committing dacoity:- Whoever, at any time after the passing of this Act, shall be one of five or more persons assembled for the purpose of committing dacoity, shall be punished with rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine.

It is obvious from the definition itself that for sustaining a conviction under the section, the prosecution has to establish reliable evidence to show that the assembly of five persons or more was for the purpose of committing dacoity. It is not always possible to find out the intention and purpose of the persons assembled. The purpose has hence to be deduced from the facts and circumstances established in the case. Such facts and circumstances must show that the assembly of the persons was only for the purpose of committing dacoity. If there is evidence to show that they have assembled after conspiring to commit dacoity that will certainly justify the Court in inferring that the assembly was for the purpose of committing dacoity though no other overt act, is evident. Since the essence of the crime lies not in the assemblage of men with particular purpose, it is for the prosecution to establish that aspect through acceptable evidence: may it be direct or circumstantial. Suffice it to say that such evidence should point invariably to the purpose aforementioned. The established facts and circumstances must therefore justify an inference with regard to the existence of an intention to commit dacoity.

7. In the instant case the established facts are that:-

(1) There was an assembly of six persons of whom the first accused had a dagger at his waist underneath the shirt worn by him.

(2) They were seen at an untimely hour and they tried to run away on seeing the police;

(3) There is no satisfactory explanation to justify their presence at the spot.

(4) Accused Nos. 1 and 4 were convicted previously for the offence u/s 48(c) of the Act.

8. As against the said aspects the points in favour of the accused are:-

(1) There was no previous incident of dacoity in which these accused were involved.

(2) Excepting the first accused, the others had no weapon in their possession.

(3) There was no evidence to show that anyone was threatened or that they were waiting for an opportunity to strike.

(4) There was no resistance when they were tried to be arrested and

(5) There is no evidence of any conspiracy preceding the occurrence.

9. During arguments, the learned Counsel for the petitioner brought to my notice the decision in Chaturi Yadav and Others Vs. State of Bihar, . That was also a case where on the date of occurrence the accused had assembled at a lonely spot in a school premises and on seeing the Police Patrol Party the accused tried to run away; but were apprehended and one of the accused had in his possession a gun and live cartridge and others also had one live cartridge each in their pockets. After considering the possibility of their assembly being for committing dacoity, the Apex Court, however, held that the evidence led by the prosecution that the persons, armed with weapon and cartridges were found in the school premises at around mid night, by itself, was insufficient to hold that they had assembled for the purpose of committing dacoity or after making preparations to accomplish that object and acquitted them.

10. In the instant case, it is not established that the petitioner was involved in any previous incident of dacoity and no weapon or other instrument for house breaking etc. was found on his body at the time of his apprehension. There is also no evidence of any pre-existing conspiracy pursuant to which they had assembled there. The version of the petitioner in the answer given during examination u/s 313 of the Cr.P.C. was that he was on his way to his house after seeing a film and after taking tea and that he was taken by the police on suspicion and implicated in this case.

11. The oral evidence adduced in the case is only to the effect that the petitioner was found in the company of others and also that the first accused in the case had in his possession a dagger. Merely from these facts, it may not be possible to draw an inference that the persons were assembled for the purpose of committing dacoity. Of course concrete evidence with regard to the intention behind the assembly may

not be easy to get; but then, the available facts and circumstances should at least justify a reasonable inference that the gathering had such an intention. There is not even any circumstantial evidence available in the present case to show that the petitioner was actually available at the spot with an intention to commit dacoity.

12. I am of the view that the accused, in the circumstances of this case, is at least entitled to get the benefit of doubt with regard to the intentions. The impugned judgments are therefore set aside and the accused is granted the benefit of doubt and acquitted. The bail bond executed by him will stand cancelled and he is set at liberty.

The revision is allowed as above.