# Dargahi and Others Vs Emperor

**Court:** Calcutta High Court

**Date of Decision:** Dec. 1, 1924

**Acts Referred:** Criminal Procedure Code, 1898 (CrPC) â€" Section 360

**Citation:** AIR 1925 Cal 831

## Judgement

1. The eight appellants were tried before the Sessions Judge of Hooghly and a Jury on charges of rioting and dacoity. Five of them, appellants

Nos. 1, 2, 5, 6 and 7 were convicted of rioting only and sentenced each to one year"s rigorous imprisonment. Two of them, appellants Nos. 3 and

8 were convicted of dacoity only and sentenced each to three years" rigorous imprisonment. The appellant No. 4 was convicted on both the

charges and was sentenced to three years" rigorous imprisonment for rioting, the sentences to run concurrently.

2. The first point taken in this appeal is that the trial is vitiated for failure of the trying Court to comply with the provisions of Section 360, Cr. P.C.

It is stated in the affidavit filed on behalf of the accused that the depositions were read over to the witnesses and that though this was done in the

presence of the accused persons it was done in such a manner that the accused persons could not hear the evidence read; and further that while

the evidence of one witness was being read over to him the evidence of another witness was being taken in the Court. To rebut this the prosecution

have produced the statement made by the stenographer who read over the evidence to the witnesses. His account is that he read out the

depositions of all the witnesses in the presence of all the accused persons, sitting at a place near the middle of the dock in which the accused were

standing and he did so rather in a loud voice so as to reach the ears of all the accused during tiffin hours, and when the examination of the witnesses

was finished for the day. We do not attach much importance to the question whether the evidence was read sufficiently loud to be heard by all the

accused. If any of the accused had any ground to object that they were unable to hear they should have at once complained to the learned

Sessions Judge and this could have been remedied. No such complaint appears to have been made at the time and we do not believe that the

evidence was read in such a low voice that it could not be heard by the accused. But the other statement in the affidavit filed on behalf of the

accused that the evidence was read over while the other witnesses were being examined is far more important. If this was done there was no

compliance with the directions of Section 360, Cr. P. Code, since in that section the intention is that the evidence should be read in such a manner

that the accused can hear what is being read and take objection to it. Obviously they could not at one and the same time listen to the evidence that

is being read over and the evidence of a fresh witness that is being recorded. The statement on behalf of the accused is a statement on-oath. To

rebut it there is nothing but the report of the stenographer which is not on oath. The learned Sessions Judge who held the trial has been transferred

and there is consequently no report from him as to what actually happened. Under these circumstances we must hold that the sworn statement has

not been rabutted by the unsworn statement. Further even if the stenographer''s statement be accepted the method in which the evidence was read

over would not be in accordance with the 1st clause of Section 360, Cr. P.C. That clause provides that as the evidence of each witness is

completed it shall be read over to him. That means that the evidence shall be read over before the examination of another witness is commenced. It

is unnecessary to consider whether such a failure to comply strictly with the provisions of this section would necessitate a retrial since as already

stated we do not accept the stenographer''s statement in preference to that in the affidavit and the affidavit shows that there was no reading over

in the presence of the accused "" as we interpret those words. We must therefore hold that the trial was vitiated and a retrial must be ordered.

3. The learned Counsel who appeared on behalf of the appellants was prepared to argue 14 other points on behalf of his clients. We have not

heard him on all these points. A large number of them may not arise when the case is reheard since they are based on the contention that there had

been misdirection in the charge to the Jury. At the fresh trial, if there is a fresh trial before a Jury, the charge will be based on the evidence given in

that trial, and it cannot be said that there is any probability that the mistakes if any in this connection would be repeated. But there were certain

points of law which were urged which we have thought it necessary to consider in order that if there had been any mistakes they may be rectified at

the trial.

4. One of these points relates to the dacoity charge. This charge is in the following terms :-That you on or about the 3rd day of September 1922 at

Telinipara P.S. Bhadreswar committed dacoity in the shops, stalls and houses of Hindus in and about the Victoria Mill Bazar e.g., shops of Padarat

Sha and Sifaram and others and thereby committed an offence punishable u/s 395, I.P.C. According to the case for the prosecution in

consequence of dispute between Mahomedans and Hindus the appellants and others who are Mahomedans raided and looted a large number of

shops in the Bazar. Evidence has been given of the looting of as many as 60 shops. The looting of each of these shops must be held to be a

separate offence, and it is by no means certain that even in the case for the prosecution dacoity was committed every time a shop was looted.

Though the number of rioters far exceeded 5 it does not necessarily follow that there were as many as 5 persons looting each individual shop, nor

does it necessarily follow that when each shop was looted there was force or violence used in every case which would make the offence the

aggravated one of dacoity. However, as there must be a retrial, it is not necessary to consider what was the effect of charging as a single dacoity

what were in fact a large number of separate offences. At the retrial it will be open to the prosecution to have charges framed in respect of one or

more individual dacoities which they are prepared to prove and the trial can proceed on those charges. But we think that charges of dacoity should

not be framed against those appellants who have been acquitted of dacoity at this trial. We further think it is a matter for consideration by the

officers of the Crown whether it is desirable to frame charges of dacoity at all. The dacoities were not of the ordinary kind committed by a gang of

professional thieves, but were aggravations and no doubt serious aggravations of the riot. It is for the officers of the Crown to consider whether it

would not be sufficient at the retrial to proceed on the charge of riot only.

5. We have been asked by the learned Counsel for the accused to make a special recommendation in the case of the 8th Appellant Abdul Gani

Jamadar. We are informed that he has already been convicted both of rioting and of dacoity in connection with this occurrence; for the former he

has been sentenced to one year"s and for the latter to two years" rigorous imprisonment. In consequence of a previous conviction on the charge of

rioting the learned Sessions Judge directed the jury that they should not convict him on the charge of rioting framed against him at this trial and we

hold that this was a proper direction. It seems to us worthy of consideration whether it is desirable that he should be again charged in respect of

another dacoity arising out of the same occurrence.

6. Another point of law on which there is said to have been an error committed was in regard to the first information. It was urged that the first

information was not really the first information, as it was recorded by the Police officer after he had been investigating the case for two hours or

more. We hold that having regard to the facts that have been placed before us this information must be held to be an information which was

recorded u/s 154. Though some enquiry was made before this information was recorded it could not be an investigation under Chapter XIV of the

Code of Criminal Procedure since before there should be an investigation under that Chapter there must be an information given to an officer in

charge of a Police station and reduced to writing by him. No such information had been recorded until the statement Ex. 10 was taken in this case.

Our attention has been drawn to several Rulings on this point. It is unnecessary to discuss them in detail; but in some of them the facts will be found

to differ on this point that the information had been recorded prior to the recorded statement which was held could not be proved as the first

information. In others of the reported cases the real point of the ruling is not that the statement is inadmissible but having regard to the late stage at

which it was recorded it has lost a great deal of its evidentiary value. We hold there is no substance in this objection.

7. On the next point as regards the erroneous admission of evidence we hold that the learned Counsel for the defence made a sound contention. In

the charge to the Jury the learned Sessions Judge has referred to the evidence of P.W. 77 and 100, Protap Singh and Sheo Lakhan Singh about an

incident which took place on the day after the occurrence.

8. Their evidence is that the appellant Basir wanted to convert Sheo Lakhan into Islamism and threatened to beat him if he did not agree. This

incident on the day after the occurrence is totally irrelevant to either of the charges framed and the evidence should not have been admitted.

9. The last point on which we have heard arguments relates to the depositions of 9 witnesses which were admitted in evidence at the Sessions

Court on the ground that the witnesses were dead or could not be found. We express no opinion as to the sufficiency of the evidence which was

adduced to render those depositions admissible u/s 33 of the Evidence Act. But we must point out that if it is sought to use these depositions at the

trial the Court must first be satisfied that they were recorded after due compliance of the provisions of Section 360, Cr. P.C. since it is urged that

they were not so recorded by the Magistrate.

10. For the above reasons we allow this appeal. We Bet aside the convictions of the appellants and direct that they all except Abdul Gani Jamadar

be retried on the charge of rioting. The appellants Ashgar Maya, Ramjan Sardar and Abdul Gani Jamadar may be retried on properly framed

charges of having committed dacoity if the officers of the Crown think it necessary to do so. If no charges of dacoity are framed the retrial may

take place before any first class Magistrate to be selected by the District Magistrate.