

Present :

Mr. Justice Ashish Ranjan Das.

Criminal Appeal No. 848 of 1994

In the matter of:

Md. Nasib Ali and others

..... Appellants

-Versus-

The State

..... Opposite party.

None appears for the appellant.

Mr. Kazi Eliasur Rahman, A.A.G. with

Ms. Tahmina Sultana, A.A.G

... For the State

Heard on: 10.08.2022 and 11.08.2022

Judgment on: 17.08.2022

Ashish Ranjan Das, J:

Learned Assistant Sessions Judge, Sunamgonj by his judgment dated 30.04.1994 passed in Session Case No.14 of 1992 found this 3 appellants Md. Nasib Ali, Saim Ali and Shamsul Islam guilty of the charge calling for a penalty under section 395 of the Penal Code and accordingly sentenced each of them to suffer rigorous imprisonment for 5 years each coupled with a fine of

Tk.2000/-. Besides the learned trial court convicted appellant No.1 Nasib Ali of the charge under section 397 of the Penal Code and enhanced punishment of 7 years. Occurrence alleged is said to have taken place in the night following 26.02.1990 and the range of punishment is 7 years in the maximum and the learned Assistant Attorney General could not give any impression as to whether the accused persons are still alive or not, upon searched the appellants' lawyer also could not be traced.

Short facts relevant for the purpose that could be gathered from file are that a marriage had taken place in the house of informant Naiyar Miah. Next night while several inmates were taken in the rooms of the house involving the marriage dacoits fell upon, they fired gun shots broke open the door, they looted all the valuables from the house including gold ornaments and beat a number of inmates. The dacoits were found carrying

gun, dagger, wooden, rod, torch etc. Initially the culprits tied some vital members of the house so that they cannot move. The proceeding continued for half an hour starting from 12-O' clock at night. The culprits were seen putting on half pant and genji. As the dacoits started retreating by firing gun shots, the inmates raised a cry and neighboring people converged. Many of them saw the culprits run away and they were given an account of the occurrence.

During investigation 2 of the culprits could be caught and upon their admission 2 country made guns with cartridges were recovered by the police. Besides an evidence P.W.1 the informant could recognize accused Saim, Abdul Kader and Modrish with the help of burning lantern and focus of torch, P.W.5 could also recognize Shamsul Islam and Saim Ali the appellants. They confessed to have beaten inmate Saim Ali and the informant and they could recognize Saim Ali and

Shamsul Islam. Police recovered used cartridges from the premises of the house.

The defence plea was that none of the neighboring witnesses could recognize any dacoit. But it's a matter of common understanding that in such a case of dacoity non related neighboring witnesses reaching the spot late are not expected to have recognised a particular daiop. Defence could raise no clue that the inmates particularly the informant could bring vexacious case against so many accused persons for any pending enmity.

It is true that no T.I. Parade was held but defence took no such plea rather in appeal also it remained slept over.

As, I have noticed although the matter has been occurring in the daily cause list over the period but neither of the accused nor any lawyer could be traced. The learned Assistant Attorney General pointed out that since the matter is old enough and the range of

punishment is low, these culprits may have by this time served out the sentence and gone out. Be that as it may a number of accused remained unidentified and they were acquitted but so far as these 3 appellants are concerned, the judgment of the learned trial court appears quite convincing. So, I fully agree with the learned Assistant Attorney General that the appeal is without any merit and the judgment of conviction and sentence should be upheld.

Accordingly, the appeal is dismissed.

The convict appellants are directed to surrender before the trial court in order to serve out the remaining part of the sentence if there be any.

Send down the L.C.R and the copy of the order to the trial court for information and necessary action.

(Justice Ashish Ranjan Das)

Md. Atikur Rahman, A.B.O.