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**(2011) 10 AHC CK 0072**  
**In the Allahabad High Court**  
**Case No : Criminal Appeal No. 1061 of 1982**

Gulabi

APPELLANT

Vs

State of U.P

RESPONDENT

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**Date of Decision :** 11-10-2011

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 313, 515  
Penal Code, 1860 (IPC) — Section 307, 392, 394, 397, 411  
Police Act, 1861 — Section 40

**Citation :** (2012) 1 ACR 645

**Hon'ble Judges :** Vinod Prasad, J

**Bench :** Single Bench

**Final Decision :** Dismissed

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## Judgement

Hon. Vinod Prasad, J

1. Challenge in this appeal by the sole Appellant Gulabi is to his conviction under Sections 394/397 I.P.C. with imposed sentence of seven years RI recorded by 6th Additional Sessions Judge, Bareilly in S.T. No. 26 of 1981 (State v. Gulabi) relating to P.S. Kotwali, District Bareilly.

2. In short, prosecution allegation against the Appellant is that on 5.10.1980 at 7.15 P.M., he along with one of his associate robbed victim Niranjan Prasad of his wrist watch HMT Vijay No. 130277 HS with golden dial and white steel chain and caused him injuries with knife. While victim Niranjan Prasad P.W.-2 was grappling with robbers, he was shrieking for help, which attracted P.W.-1 informant constable Rishi Pal Singh, constables Om Pal Singh and Surendra Pal Singh towards the spot and they witnessed the scuffle and muscle flexing in between the three persons. All the police constables chased the culprits, who spotting them meanwhile had sprinted away and Appellant was apprehended. Informant P.W.-1 Rishi Pal Singh prepared the arrest and recovery memo and brought the arrested accused along with fainted victim P.W.-2 Niranjan Prasad to the police station Kotwali where P.W.-1 dictated FIR Ext. Ka-2, which was registered as

crime No. 1824 of 1980, under Sections 392, 307, 411 I.P.C. on 5.10.1980 at 8.30 P.M. mentioning the distance between the scene of the incident and police station to be one mile.

3. Since victim was fainted, after preparation of letter of request for medical examination, he was dispatched to the hospital for treatment of his injuries. Medical examination of the victim was got conducted on 5.10.1980 vide Ext. Ka-11 and following facts were noted by the doctor in the medical examination report:

Examined unknown aged about 35 years S/o unknown R/o unknown place, (P.T.) C.P. Rishipal Singh, P.S. Kotwali, Bareilly on 5.10.1980 at 8.45 P.M.

M.I. Healed Scar 3 cm x 2 cm on (Rt) Patilla.

Injuries:

(1) I.W. 6 cm x 0.2 cm muscle deep on (Lt) side face, starting from lateral side of nose up to (Lt) lower eye lid.

(2) I.W. 0.5 cm x 0.2 cm muscle deep on lateral side of (Lt.) eye.

(3) Multiple Incised wound in an area of 21 cm x 11 cm on Rt side of (P.T.) front of neck and on (Lt.) side of lower part of neck, oozing of blood from (P.T.) wounds present.

(4) I.W. 1 cm x 0.5 cm on out side of (Lt.) ear.

(5) Smell of alcohol coming out of his mouth and breath as he has consumed alcohol.

Opinion:

Injury (1), (2) & (4) are simple. Injury No. (3) kept under observation Advised X-Ray and Referred to Surgeon (P.T.) his opinion about this injury.

All injuries are caused by sharp (P.T.) Duration fresh.

4. Appellant Gulabi had also sustained injuries in the same incident and he too was sent for medical examination along with the victim and his medical examination was conducted on the same day at 9.20 P.M. vide Ext. Ka-12 and following facts were noted by the doctor in his medical report:

Examined Gulabi aged about 30 years S/o Tarachand R/o Village Gularia P.S. (P.T.) on 5.10.80 at 9.20 P.M. in Distt. Hospital, Bareilly (P.T.) No. 6 Om Pal Singh, P.S. Kotwali, Bareilly.

M.I. Black mole on Lt side of abdomen 6 cm away from umbilicus.

Injuries:

(1) I.W. 1 cm x 0.2 cm muscle deep on palmer aspect of prox Phalang of little finger (Rt.) wound is transverse. Oozing of blood present.

(2) I.W. 1 cm x 0.3 cm muscle deep on palmer aspect of middle Phalang of ring finger (Rt.) wound is transverse.

(3) Two I.W. 0.8 cm x 0.1 cm each transverse, parallel to each other on palmer aspect of Prox. Phalang of ring finger (Rt.).

(4) Linear abrasion 1.5 cm on palmer aspect of prox. Phalang of (Rt.) middle finger. Transversely situated.

(5) Two linear abrasion 2 cm each transversely situated on palm (Rt.) on ulnar aspect.

(6) Abrasion in area of 1 cm x 1 cm on front part of upper leg (Rt.).

Opinion:

All injury are simple in nature caused by sharp edged weapon except Inj. No. (6) which is caused by friction. Duration fresh.

5. Investigation into the crime was commenced by SI Jwala Singh P.W.-3, who was presented at the police station when the FIR was registered at 8.35 P.M. by head constable Om Pal Singh, who had prepared chik FIR Ext. Ka-2 and GD entry Ext. Ka-4. On 14.10.1980, crime was converted to under Sections 397, 412 I.P.C., which conversion was recorded in the GD entry by head constable Udai.

6. Investigating Officer P.W.-3 Jwala Singh conducted spot inspection, prepared site plan Ext. Ka-6, requisitioned the looted watch from the victim, took it in custody and prepared its recovery memo vide Ext. Ka-7. I.O. also recovered blood stained attire of the victim and prepared its seizure memo Ext. Ka-8, recovered blood stained attire of the Appellant and prepared its recovery memo Ext. Ka-9. Concluding investigation, I.O. charge sheeted the Appellant vide Ext. Ka-10.

7. Appellant accused was summoned by the trial court and finding his case triable by Session's Court, his case was committed to it for trial where on 11.3.1981, IXth Additional Sessions Judge charged the Appellant for offences under Sections 394, 397, 411 I.P.C., which charges were denied by the Appellant who claimed to be tried and hence proceeding to establish his guilt commenced.

8. During trial, to bring home the charges against the Appellant, prosecution relied upon three witnesses out of whom, P.W.-1 Rishi Pal Singh is the informant, P.W.-2 Niranjan Prasad is the victim, P.W.- 3 S.I. Jwala Singh is the I.O. and P.W.-4 Dr. Ravi Mehra is the doctor, who had medically examined the injured and the accused.

9. It seems that later on the aforesaid sessions trial was transferred to the Court of 6th Additional Sessions Judge, Bareilly. Trial Judge found the case of the prosecution proved to the hilt against the Appellant and, therefore, convicted and sentenced him vide impugned judgment and order dated 22.4.1982 for offences under Sections 394/397 I.P.C. and imprisonment for seven years RI, which

judgment of conviction and sentence is under challenge in the instant appeal.

10. Aforesaid appeal was admitted by this Court on 3.4.1982 and Appellant was directed to be released on bail. Subsequently, it seems that the appeal was listed for hearing but Appellant or his counsel did not appear. In the aforesaid view, warrants were issued against the Appellant and reports existing on the record dated 11.1.2007, 16.9.2008, 9.11.2009 send by C.J.M. and Sessions Judge, Bareilly, indicate that whereabouts of the Appellant is not traceable, he does not have any movable and immovable property in the village. Be that as it may, because of non tracing of Appellant, appeal in this Court cannot be kept pending. Aforesaid report further indicate that the Appellant was a bachelor and, therefore, nobody knows his whereabouts.

11. On the above facts I have heard Dr. Abida Syed, learned Amicus Curiae for the Appellant and Sri Patanjali Mishra, learned AGA for the State.

12. Dr. Syed castigated the impugned judgment of conviction and sentence by contending that there are contradictions in the statements of witnesses, prosecution witnesses are not reliable, Appellant was a rickshaw puller and the police personnels were taking undue advantage and were not paying him the labour charges and when demanded, he was falsely implicated in the present case. Dr. Syed further referred to certain contradictions, which are insignificant for judging the guilt of the Appellant. Concludingly, it was submitted that the appeal of the Appellant be allowed.

13. Learned AGA to the contrary supported the prosecution version and the impugned judgment and submitted that it is a case of spot arrest, there was no reason for the police constables and the informant to depose falsely against the Appellant and hence conviction and sentence of the Appellant does not require any alteration and interference by this Court and the appeal of the Appellant be dismissed.

14. I have considered the argument raised by both the sides. Informant P.W.-1 constable Rishi Pal Singh and victim P.W.-2 Niranjan Prasad have supported the prosecution case in its entirety. No damaging evidence could be brought on record by the defence counsel to mistrust them. There is no incredible evidence. It is a case where in the darkness, at a railway over-bridge, victim P.W.-2 was robbed by the Appellant and his associate, during course of which, Appellant caused knife injuries on the face and neck of the victim.

15. Shrieks of victim attracted three police constables including informant who sprinted and apprehended the Appellant with blood stained attire and blood trickling knife. He was brought to the police station in that condition itself. Appellant also had sustained incised wounds. Presence of victim P.W.-2 and Appellant, who both had sustained injuries in the same incident cannot be doubted. Very bizarre, defence counsel had thrown unconvincing and unappealing suggestions to these witnesses. Entire cross examination of these two facts witnesses is totally perfunctory and does not help the accused at all. In

my humble view, trial Judge has not committed any error in relying upon their testimonies.

16. In his statement u/s 313 Code of Criminal Procedure. Appellant had failed to point out any reason for his false implication. He was a poor labourer and, therefore, if the police wanted to fabricate a false case, it was very easy to book him u/s 151 Code of Criminal Procedure. or Section 40 of the Police Act. A bald suggestion by the Appellant regarding his false implication without any preceding facts and background, deserves to be repelled rather than cogitated.

17. In view of above, I do not find any merit in this appeal. Minimum sentence has been awarded to the Appellant and prosecution case has been corroborated by the medical testimony of P.W.-4 and, therefore, sentence of the Appellant cannot be reduced from what has been prescribed by the statute. Section 397 I.P.C. ordains that in case of robbery or dacoity where use of deadly weapon with hurt to any person has been caused, offender shall be punished for not be less than seven years RI. In the present case, victim did sustain grievous injuries and, therefore, minimum sentence of seven years cannot be reduced any further. Appeal lacks merit and is hereby dismissed.

18. Let a copy of this judgment be certified to the trial court, who is directed to make all endeavour to get the accused traced out and arrested and then dispatch him jail to serve out remaining part of his sentence. Surety bonds and bail bonds of the Appellant, though reported not traceable, are hereby discharged.

19. Dr. Abida Syed was appointed Amicus Curiae in this appeal by this Court to argue the appeal vide order dated 24.10.2009 and she has rendered valuable assistance in disposal of this appeal, therefore, I direct the office to pay her Rs. 8,000/- as her fees.