
(1998) 04 AHC CK 0068
In the Allahabad High Court
Case No : Criminal Appeal No. 2687 of 1979

Mail Singh @ Mehal Singh and Anr.

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 21-04-1998

Acts Referred:

Penal Code, 1860 (IPC) — Section 395, 397

Citation : (1998) 04 AHC CK 0068

Hon'ble Judges : M.C. Agarwal, J

Final Decision : Allowed

Judgement

M.C. Agarwal, J.—This is an appeal by the two appellants Mail Singh alias Mehal Singh and Autar Singh against the judgment and order dated 11979 passed by the III Additional Sessions Judge, Pilibhit, in Sessions trial No. 45/78 whereby they were found guilty of an offence under Section 395 read with Section 397, IPC and were sentenced to undergo rigorous imprisonment for a period of seven years each. The appellants have not appeared and efforts to procure their attendance by issuing of nonbailable warrants have not succeeded. I, therefore, proceed to dispose of this appeal on merits in the absence of the accused.

2. I have heard the learned Additional Government Advocate and have perused the records.

3. This is a case of dacoity committed in a running train on 2451976. The prosecution case was that on that day at about 7 p.m. the first informant Grish Chand alongwith his wife and two sisters and other copassengers were travelling in Train No. 148 which goes from Tanakpur to Pilibhit. Five persons came into the compartment No. 5527 TypeSLR when the train started moving from Neoria Railway Station. One of them was carrying a Gandasa while the others had country made pistols. They looted him and his companions of their valuable articles and they got down when the train stopped at the outer signal of Pilibhit and ran away. A report of this incident was lodged at 20.40 p.m. on the same evening at police station G.R.P. Pilibhit. Investigation commenced on 2551976.

SubInspector D.K. Thapalyal arrested the two appellants and one Manzoora Singh near railway station Bilsanda as they were moving in suspicious conditions and several valuable articles were recovered from their possession which were alleged to have been looted in the dacoity. The arrested persons were made Baparda and were subjected to test identification. The articles recovered from them were also subjected to test identification which had been correctly identified. They were chalianded and put up for trial.

4. At the trial the prosecution examined PW6 Grish Chand Sharma; PW7 Km. Sabita Jaiswar; S.I. D.K. Thapalyal PW11, Makhan Singh PW12 and Nasir PW13. They are material witnesses. In addition there were several formal and link witnesses.

5. Out of the above witnesses there are only two persons who speak about the participation of the accused in the dacoity. They are PW6 Grish Chand Sharma, the first informant and Km. Sabita Jaiswar, PW7. They had identified the accused at the test identification parade as well as in the Court. They had also identified some of the articles alleged to have been recovered from the accused persons and alleged to have been looted from these persons.

6. What is important in this case is that all the three accused who were arrested and put up for test identification were Sikhs having beards and long hair on their head but in the FIR it was not stated that the culprits were Sikhs or had Sikhlike appearance. What was stated was that the dacoits were speaking local and Banjara language. This description does not tally with the accused. Further it has come in evidence that accused Manzoora Singh was an unusually tall person of 190 cm. so much so that according to the concerned Magistrate, a pit about 1 ft. deep was dug in which this accused was made to stand for test identification so that his height becomes matching to other persons included in his parade. The FIR does not state that amongst the dacoits was any such tall person. The learned Sessions Judge has disbelieved this aspect by saying that there may be Sikh person having long hair and beard. It is true that there could be such persons but a sufficient description was required to be given. Long hair and beard is a thing, which can be easily described and should not be missed. The FIR gave minor details of the ornaments looted and so much so that it gave the number of the train compartment as well. But specific aids for identification in respect of the accused were not mentioned in the FIR and mention that they were speaking Banjara language is not compatible with the identity of the accused put for trial. Further at the test identification parade none of the witnesses made any observation about the person identified. Column 10 of the identification memo requires that after a witness identifies an accused put for test identification the witness should tell the Magistrate what the accused was seen doing during the occurrence. This column mentions "Nil" against all the witnesses. Even during their evidence in the Court they have not stated what role was played by each accused. They have not stated that any of them armed with Gandasa or with a country made pistol. The witnesses are not shown to

have given any description of the dacoits, that may tally with the features of the accused, to the Investigating Officer as well. Therefore, the evidence of identification was not acceptable. It may be mentioned that Nasir, PW13, is also a victim of this dacoity. He was not put up as a witness at the test identification parade nor did he state in his evidence that any of the accused present in the court was amongst the dacoits.

7. As regards recovery, there is the sole statement of a police officer O.K. Thapalyal, PW11. The public witness Makhan Singh did not support the prosecution case. He denied that the accused were arrested or searched in his presence. He was treated as hostile. In these circumstances the evidence of recovery is also not so convincing as to justify the finding of the guilt.

8. For the above reasons, the judgment and order passed by the learned Sessions Judge is not sustainable and is hereby set aside. The appellants are acquitted of the offence under Section 395 read with Section 397, IPC. The warrants of arrest issued by the Chief Judicial Magistrate, Pilibhit stand withdrawn. Appeal allowed.