
(1997) 03 AHC CK 0105

In the Allahabad High Court

Case No : Criminal App. Nos. 1271 of 1980 and 1370 of 1980

Pawan and Anr.

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 18-03-1997

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 154

Evidence Act, 1872 — Section 9

Penal Code, 1860 (IPC) — Section 395

Citation : (1997) 03 AHC CK 0105

Hon'ble Judges : N.S.Gupta, J

Final Decision : Allowed

Judgement

N.S. Gupta, J.—Both these criminal appeals arise out of judgment and order of conviction dated 23580, recorded by Sri V Chandra, the then Vth Addl. Sessions Judge, Saharanpur, convicting the accused appellant Pawan, ROOD Chandra and Chanda under Section 395, I.P.C. and sentencing them to five years R.I., they are, therefore, disposed of by this common judgment.

2. The prosecution story briefly stated is as follows:

The complainant Baldeo Raj, P.W. 1 was a cloth vendor, who was carrying on his cloth business at Moradabad. On 16/12/78, he purchased some cloths value at Rs. 2,435, which consisted of lot and blankets from M/s Hansraj, Kishan Lal Cloth Merchant, Shastri Market, Saharanpur. He got into the passenger train from Saharanpur to Moradabad. On intervening night of 16/17/12/78, when the train reached near Chudihara Railway Station, 56 bandits entered into the compartment in which the complainant was travelling. The complainant Baldeo Raj had kept the bundle of clothes which was purchased by him near seat and slept down thereon. The bandits assaulted Baldeo Raj by kicks and made him to get up. They looted away the bundle of Loi and Blankets which the complainant was carrying by showing pistol to him. The bandits also looted away a sum of Rs. 90/ in cash from the complainant. When the train reached at railway station

Roorkee, Shri Baldeo Raj lodged a written report (Ex. Ka13) about this occurrence.

3. It appears that the accused appellant Roop Chand was arrested on 261278, by Janak Singh Yadav, S.O., G.R.P. Luksher on the road going from Laksar to Khanpur. 19 Loi and blankets which were looted away in this case were recovered from his possession. Accused appellant Pawan was arrested on 291178, but nothing incriminating was recovered from his possession. The accused appellant Chanda was arrested on 311278. No looted property was recovered from his possession. However, a country made pistol and two live cartridges were recovered from his possession. Roop Chand informed the Investigating Officer that he had sold 50 Loi to Ali Hasan of Luksar. The said Lois were also recovered from the possession of Ali Hasan.

4. Accused appellant Pawan, Roop Chand and Chandra were put up for identification inside the subjail Roorkee on 17179. Baldeo Raj, Kishan Lal, Sant Ram and Sant Lal had correctly identified the accused appellant Pawan. Accused appellant Roop Chand was correctly identified by Baldeo Raj, Kishan Sant Ram. Accused appellant Chanda was correctly identified by Baldeo Raj, Kishan Lal but was wrongly identified by Sant Ram and Sant Lal. The article recovered from the possession of Roop Chand and Ali Hasan were also put up for identification and were correctly identified by Baldeo Raj and Kishan Lai. The accused appellants were accordingly prosecuted and convicted as aforesaid. Hence the appeal.

5. I have heard Sri Anurag Pathak, learned counsel for accused appellants Pawan and Roop Chand, Sri Devendra Dahma, learned counsel for accused appellant Chanda and Sri VB. Singh, learned A.G.A. for State, considered their contentions and gone through the facts and circumstances of the case.

6. The fact that the complainant Baldeo Raj had purchased certain Loi and Blankets from M/s Hansraj, Kishan Lal Cloth Merchant, Shastri Nagar, Saharanpur on 161278, and that he had boarded the passenger train going to Moradabad on the intervening night of 16/171278, alongwith the purchased articles and that the said articles were looted away by certain bandits from the Railway compartment in which Baldeo Raj, complainant was travelling stands fully proved by the direct evidence of Sri Baldeo Raj P.W. 1. Now the pertinent question which arises before this Court for determination is to see whether the accused appellants facing trial before this Court were responsible for looting the said clothes.

7. Sri Baldeo Raj, P.W. 1 had lodged a written report about this occurrence at police station G.R.P., Roorkee on 171278 at about 4.00 a.m., in which nobody was named as culprit in the said F.I.R. Only this much was averred that certain bandits had entered into the railway compartment; they enquired from the complainant as to what was there in the bags. They were armed with revolver and knives, on saying that there was Loi and Blankets in the bags, the bandits asked the complainant to get away and looted away those articles and went

away. No description of any of the bandits was mentioned in the F.I.R. The approximate age of the bandits, their colours, and facial features were also not mentioned. Unfortunately, the important fact of light in which the complainant claimed to have seen the faces of the bandits was also not mentioned in the F.I.R.

8. It was contended on behalf of State by Sri V B. Singh, AG.A. that F.I.R. was not the encyclopaedia. The omission on the point of light and the facial expressions of the bandits was an inadvertent omission. It should not be regarded as fatal to the case of the prosecution, particularly in view of the statement of the complainant who has specifically stated that there was light of 45 bulbs inside the compartment and in the said light he has seen the face of the culprits who had looted away the Loi and blankets.

9. True it is that the F.I.R. would not be regarded encyclopaedia, but when the complainant lodged a written report at police station and specifically mentioned all the relevant details including the ticket No. with which he was travelling, the articles which he was taking, the name of the seller from where he had purchased the said clothes, the omission of the facial expression of the bandits and the important source of light from the F.I.R. cannot be lightly taken up by this Court.

10. The route in question from which the complainant was travelling and the train in which the complainant was travelling was a passenger train. Instances are not rare, where in the passenger train passing through the mufassil areas on the routes in question, that the various compartments of the train remain without light. The light is either not put on, or miscreants boarding the trains remove the bulbs making the source of light from the compartment all together obscure. If it was a fact that the source of light was very much there in the compartment, I fail to understand as to why a mention about the same was not made in the F.I.R. The omission of the salient features and facial expressions of the bandits from the F.I.R. shows that there was in fact no light in the compartment and taking advantage of the darkness the bandits had looted away complainant and took away the valuable clothes which the complainant was taking.

11. It is important to note here that the F.I.R. does not contain the name of the Kishan Lal, P. W. 2 as a witness of the occurrence or any other person who may have travelled in that compartment. Kishan Lal, P. W. 2, is said to be the brotherin law of the complainant. If it was a fact that Sri Kishan Lal, P. W 2 was also travelling alongwith the complainant Baldeo Raj in the compartment in question on the fateful night of occurrence, I am of the opinion that his name must have found place in the F.I.R. The omission of the name of Kishan Lal, P.W. 2 in the F.I.R. as one of the witness of the occurrence, makes the evidence of Kishan Lal altogether improbable and it is difficult for me to place reliance upon the same.

12. When there was no proper source of light in the compartment in question

where the dacoits committed loot and when the complainant could not have seen the faces of the culprits, the result of identification loses its significance. I am, therefore, unable to attach any significance to the identification evidence of Baldeo Raj, P.W. 1 and Kishan Lal, P.W. 2. Once the identification evidence of these two witnesses becomes doubtful and incredible, there remains no evidence on record to connect the accused appellants with the occurrence in question.

13. The result of identification evidence as against accused appellant Chanda, being two correct and two wrong was absolutely meaningless.

14. The circumstances that the learned trial Court convicted accused appellant Chanda also on the basis of nil result of identification shows over zealousness of the learned trial judge. I am therefore, unable to sustain the finding of guilt recorded by the learned Addl. Sessions Judge as against the accused appellants.

15. It was argued on behalf of the State that 19 Loi and one blankets were recovered from the possession of the accused Roop Chand, which were the looted property and, therefore, on the basis of the said recovery it should be believed that he had participated in the occurrence in question. I am unable to agree. The blanket and Loi were said to be brand new which was easily available in the market and which could be identified by Baldeo Raj, P.W. 1 and Kishan Lal, P.W. 2, with reference to the mark of Kishan Lal which was found on these articles, whereas, no such identification mark was there on the articles which were mixed up. These articles being commonly available in the market, they cannot be deemed to be the looted property and the accused appellants cannot be connected with the occurrence of this case with reference to the said articles.

16. In the result, I find that the appeals deserve to be allowed. It is accordingly allowed. The order of conviction and sentence recorded by the learned trial Judge against the accused appellants Pawan, Roop Chand and Chanda are hereby set aside. It appears that the bail bonds of the accused appellants have already been cancelled. Since the appeal has been allowed, they need not to be arrested. They shall be set at liberty forthwith, if no longer required in connection with any other case.

17. Let a copy of this order be given to the appellants counsels on payment of usual charges forthwith.

Appeals allowed.