
(1997) 10 AHC CK 0065
In the Allahabad High Court
Case No : Criminal Appeal No. 513 of 1983

Ram Autar and Anr.

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 15-10-1997

Acts Referred:

Penal Code, 1860 (IPC) — Section 395

Citation : (1997) 10 AHC CK 0065

Hon'ble Judges : R.P.Nigam, J

Final Decision : Allowed

Judgement

R.P, Nigam, J.—This criminal appeal has been preferred by the appellants Ram Autar and Rameshwar against the judgment and order, dated 171983 passed by IIIrd Additional Sessions Judge, LakhimpurKheri in Session Trial No. 51 of 1983 by which the appellants were convicted under Section 395, I.P.C. and each of the appellants was sentenced to undergo rigorous imprisonment for five years under Section 395, I.P.C.

2. The case of the prosecution as disclosed in the written report Ex. Ka1 lodged by Abdul Shakur P.W. 1 in the police station Mohammadi district Kheri on 2751982 at 2.00 a.m. is as follows:

Abdul Shakur son of Makku is the resident of Mohalla Shuklapur police station Mohammadi, district Kheri and he often used to live in Kanpur in connection with the business of leather and he came back on 2651982, Abdul Gafoor, Abdul Rahim and Abdul Majid sons of Hassu and who are cousins if Abdul Shakur had purchased a grove of man and they used to look after the mangoes a came back to the house at about 12.00 p.m. on 2651982 as they used to come daily and Abdul Shakur and his said cousins were eating food in the house in the light of electricity and at about 12.30 a.m. on 2751982,1415 bandits came inside the house of Abdul Shakur from the well of Ismail and started looting the house and Abdul Shakur received injury on his head as one bandit out of the said bandits has assaulted htm and on alarm of Abdul Shakur and on alarm of the persons of

the house of Abdul Shakur, Sabir son of Lallu, Khalil son of Ramzani, Shafi Ullah son of Faizullah, Mahib Ullah son of Gulam Rasool. Gafoor son of Hassu and Majid son of Hassu who were the persons of the Mohalla of Abdul Shakur came with lathi and danda and flashing torches and giving exhortation near the house of Abdul Shakur and Wali had set fire on a chhappar which was inside the grove, seeing this that the house of Abdul Shakur was being looted and the grove was towards west of the house of Abdul Shakur and the bandits had opened the western door of the house of Abdul Shakur and had gone with looted goods on account of pressure of the persons of Mohalla of Abdul Shakur towards west. The bandits had looted (he articles mentioned in the F.I.R. Ex. Ka1 and Abdul Shakur and other witnesses had seen bandits in the light of electricity and torch and in the light of fire of chappar which was burning and had identified them.

3. On the basis of the written report Ex. Ka1, chick F.I.R. Ex. Ka2 was prepared and the case against 1415 unknown persons was registered at the report No. 4 of the G.D. on 2751982 at 2.00 a.m. The copy of report No. 4 is Ex. Ka3.

4. After registration of the case usual investigation followed. During investigation appellants Ram Autar and Rameshwar were arrested. The appellants Ram Autar and Rameshwar were put for identification and identification proceedings of the appellants were held on 391982 in the district Jail Kheri and identification memo Ex.Ka7 shows that Abdul Shakur P.W. 1 had correctly identified the appellant No. 1 Ram Autar in the test identification parade and he committed no mistake. The witnesses Mahib Ullah and Abdul Majid and Gafoor had correctly identified both theappellants and they committed no mistake.

5. S.I. Mool Chand Tewari after getting the result of the identification of the appellants and competing the investigation laid chargesheet Ex. Ka8 against the appellants under Sections 395 and 397, I.P. Con 791982.

6. The appellants were charged under Section 395, I.P.C. by the learned Court below.

7. The prosecution in order to prove its case against the accused had examined Abdul Shakur as P.W. 1, Abdul Majid as P.W. 2, Mahib Ullah as P.W. 3, Shaukat Ali as P.W 4, Vivek Kumar Singh as P.W. 5, Surendra Awasthi as P.W. 6 and Ram Avadh Singh as P.W 7 the prosecution has relied upon 12 papers which are from Ex. Ka1 to Ex. Ka12. Shaukat Ali P.W 4, Vivek Kumar Singh P.W. 5, Surendra Awasthi P.W. 6 and Ram Avadh Singh P.W. 7 are the formal witnesses.

8. The appellants denied the prosecution case and pleaded no guilty. The appellants Ram Autar has stated that the witnesses had deposed against him on account of saying of the police. He has further stated that he had been arrested on 2761982 in the farm of Shiv Shankar Lal Chaturvedi at 1.30 p.m. and at the time to his arrest Shyam Lal Trivedi, Amar Nath constable, Sukhram constable and one other constable were present and these persons had brought him to the police station and Daroga had said that he would take some work from him and he was detained in the police station up to evening (up to 9.00 p.m.) and Shyam

Lal, Mool Chand Tewari, Amar Nath Pandey, Sukhram four constables had brought him by a jeep in the evening to the farm of Shiv Shankar Lal Chaturvedi and the jeep was stopped there and Shiv Shankar Lal had tied him and constable had taken him to Gadnapur and there Ram Bharosey was arrested and he was assaulted and constable had taken a gun and Rs. 1000/ from him (Ram Bharosey) and he was left and he was falsely challenged on 3061982 at 2.00 p.m. fastening the liability of gun on him and he was shown to the witnesses in the police station up to three days regularly and the witnesses knew him from before and the witnesses used to take theka of grove. The appellants Rameshwar has stated that he was detained in the police station up to 34 days and he was shown to the witnesses there and the case had been filed against him on account of enmity with the police and the witnesses had deposed against him on account of the pressure of the police. He has further stated that his eldest son whose age was 30 years had died and he came after getting his last rites performed and at his darwaja several persons of the village were collected there and Mool Chand Thanedar and one constable came and they had taken him to the police station and he was lodged there and he was kept in the police station up to three days and he was shown to the witnesses and after that his false challan was made and he was kept without parda and he was sent without parda and he is the resident of Balhara which is at a distance of two miles from Mohammadi. The appellants did not lead any evidence in their defence.

9. The learned Court below after considering the evidence adduced in the case had held that the appellants committed an offence punishable under Section 395, I.P.C. and that is why the appellants were convicted under Section 395, I.P.C. and each of the appellant was sentenced as stated above under Section 395, I.P.C.

10. According to the prosecution the incident happened on the night by 26/2751982 at 12.30 a.m. and the F.I.R. was lodged on 2751982 at 2.00 a.m. and therefore, it cannot be said that the F.I.R. was lodged late in the police station. The learned Counsel for appellants has not contended that the F.I.R. was lodged late in the police station.

11. I have heard the learned Counsel for appellants and the learned A.G. A. The learned Counsel for appellants has assailed the judgment rendered by the Court below and contended that there is an identification evidence alone against the appellants and the prosecution witnesses namely, Abdul Shakur P.W. 1, Abdul Majid P.W. 2 and Mahib Ullah P.W. 3 who had identified the appellants in the test identification parades were not truthful witnesses and therefore, the learned Court below was not justified in placing reliance upon their statement and was not justified in convicting and sentencing the appellants under Section 395, I.P.C. Learned A.G.A. as supported the judgment given by the learned Court below and has contended that the witnesses namely, Abdul Shakur P.W. 1, Abdul Majid P.W. 2 and Mahib Ullah P.W. 3 are truthful witnesses and they had correctly identified the appellants in the test identification parades and committed no mistake and as

the said witnesses were truthful and therefore, the Court below was justified in placing reliance upon their statements and was justified in convicting and sentencing the appellants under Section 395, I.P.C.

12. Abdul Shakur P.W. 1 is the complainant of this case and he had correctly identified the appellant No. 1 Ram Autar in the test identification parade and committed no mistake. He has stated that the house of Ismail is towards south of his house which is adjacent to his house and towards west of his house Nala is and after that grove of Dr. Nasir is and at the time of dacoity Khalil and Walil were looking after the said grove. He has further stated that he and his three cousins namely, Abdul Gafoor, Abdul Rahim and Abdul Majid live in his house which belong to him and on the night of 26/2751982 a dacoity was committed at his house and in the said night bulb was burning in his house as it used to burn daily and when dacoits entered at that time they had taken their food and were preparing themselves for going to lie down and at the said time, the time was 12.30 a.m. and he came from Kanpur in the said night and his brother used to look after the grove that is why they had taken food late. He has further stated that at about 12.00 p.m. or 12.30 a.m. about 1415 dacoits entered in his house from the roof and some dacoits had lathi and some had gun and some had pistol and they came from the way of Zeena and started assaulting him and looting in his house. He has further stated that he and his brother Abdul Gafoor received injuries. He has further stated that he and ladies and children had raised alarm and all the dacoits were unknown and dacoity was committed up to more than half an hour and he had felt that something was burning outside his house towards west during commission of dacoity and subsequently he came to know that Maraiya which was on the grove was set on fire by some one. He has further stated that on alarm persons of the Mohalla had come and dacoits had looted boxes in which ornaments clothes and other goods were kept. He has further stated that in the light of bulb and torches he had seen the faces of the bandits and one bandit out of the said bandits is present in the court and he had stated after placing his hand on the accused Ram Autar that he had seen this accused at the time of commission of dacoity and he had identified this accused in the jail and for the first time he had seen him at the time of commission of dacoity and after that he identified him in the jail and in between them he had not seen him. He has further stated that he got the report Ex. Ka1 written by his son Sartaj on his dictation and he gave report Ex. Ka1 in the police station and he and his broiner Abdul Gafoor were sent for medical examination from the police station and their medical examination had taken place.

13. Abdul Majid P.W. 2 had correctly identified the appellants in the test identification parades and he committed no mistake. He has stated that dacoity was committed at his house one year and some days ago at midnight and he and his cousins Abdul Shakur and Abdul Gafoor and Abdul Rahim were in the house and they had taken their food and were going to lie down and then 1415 bandits came from the roof and from Zeena in the house and they started looting the house and assaulting and all the dacoits were unknown and bulb was burning in

the house and noise happened in the house and Maraiya which was in the grove which was towards west out side was set on fire by Khalil and that is why light came in existence and he had seen the faces of the dacoits in the light of bulb and two dacoits are present in the Court out of the said dacoits and he stated of the placing his hand on Ram Autar and Rameshwar that these persons were amongst the dacoits and he had seen and identified them and he had gone to jail for identifying the said persons and he identified the said persons there and he had seen the said persons for the first time amongst dacoits and after that he identified them in jail and in between them he had not seen them. He has further stated that persons of Mohalla came raising alarm at the time of commission of dacoity and dacoits had run away with looted goods. He has further stated that one salwar, one Jampar, one Dupatta, one Garara and one Jampar suit which are from Ext. I to EXt. V belong to him and the said articles were looted.

14. Mahib Ullah P.W. 3 had correctly identified the appellants in the test identification parades and he committed no mistake. He has stated that about one year ago at about 12.30 a.m. a dacoity was committed at the house of Abdul Shakur who was his neighbour and on alarm and he and other persons reached near his house and he and other persons also raised alarm and Khalil had set fire to Maraiya which was kept in the grove and that is why sufficient light came in existence and he had seen the faces of the dacoits in the light of the fire and the dacoits were not known. He further stated after placing his hand on Rameshwar and Ram Autar that these persons were amongst the dacoits and he had seen and recognised them. He has further stated that he had gone to identify the dacoits in jail and he identified the accused in jail and he had seen these accused for the first time at the time of commission of dacoity and after that he had seen them in jail at the time of identification and in between them he had not seen them. He has further stated that the dacoits had gone with the looted goods.

15. The statements of Abdul Shakur P.W. 1, Abdul Majid P.W. 2 and Mahib ullah P.W. 3 proved beyond doubt that dacoity was committed on the night of 262751982 at about 12.30 a.m. at the house of Abdul Shakur in Mohalla Shuklapur, police station Mohammadi district Kheri. The factum of dacoity has also not been challenged by the learned Counsel for appellants. Sri Mool Chand Tewari who had investigated the case had not been produced by the prosecution and instead of him Sri Shaukat Ali P.W. 1 was examined who has proved the site plan Ex. Ka4 and chargesheet Ex. Ka8.

16. Mool Chand S.I. and Sri Surendra Awasthi P.W. 6 who was constable had arrested the accused Ram Autar on 2761982 in Morchangar at 6.00 p.m. and after arrest he was made Baparda and he was lodged in the police station Baparda as the statement of Surendra Awasthi P.W. 6 shows. S.I. Mool Chand Tewari and constable Ram Avadh Singh P.W. 7 had arrested the accused Rameshwar on 1581982 at Puwayan road and after arrest he was made Baparda and he was lodged in the hawalat of the police station Baparda as the statement of Ram Avadh Singh P.W. 7 reveals.

17. The accused Ram Autar was handed over to Sri Vivek Kumar Singh P.W. 5 Baparda in the police station Mohammadi on 30/6/1982 for taking him from the police station to the court and from bringing him from the court to jail and Vivek Kumar Singh had produced Ram Autar before the court on 30/6/1982 Baparda and from court he had brought him from jail Baparda and lodged him there as the statement of Vivek Kumar Singh P.W. 5 shows. The accused Rameshwar Baparda was handed over to Vivek Kumar Singh on 16/8/1982 in the police station for taking him from the police station to the court and from bringing him from court to jail and Vivek Kumar Singh P.W. 5 had produced accused Rameshwar Baparda before the court on 16/8/1982 and from court he had brought him to district jail Baparda and lodged him there as the statement of Vivek Kumar Singh P.W. 5 shows.

18. The test identification parade of Ram Autar was held in district jail Kheri on 3/9/1982 though he was arrested on 29/6/1982 and he was lodged in district jail Kheri on 30/6/1982. Thus, the test identification parade of Ram Autar was held after more than two months and this makes the identification evidence which is against the appellant No. 1 Ram Autar unreliable. The evidence has been led by the prosecution that appellant No. 1 Ram Autar was arrested on 29/6/1982 and after arrest he was made Baparda and he was lodged in the police station Baparda and from the police station he was taken to the Court for remand Baparda on 30/6/1982 and after that he was lodged in district jail Kheri on 30/6/1982 Baparda. Appellant No. 1 Ram Autar after 30/6/1982 would have gone from jail to the court for remand several times and would have come back to jail from the court but no evidence has been led by the prosecution to show that Ram Autar appellant No. 1 remained Baparda when has taken to the court for remand after 30/6/1982 and he remained Baparda when he was brought to jail from court. I find that the entire link evidence for remaining Baparda of Ram Autar appellant No. 1 has not been produced.

19. The accused Rameshwar was arrested on 15/8/1982 and after arrest he was made Baparda and he was lodged in the lock up the police station Baparda on 15/8/1982 and he was taken out from the police station Baparda on 16/8/1982 for producing him in court and he was produced before the court Baparda on 16/8/1982 and was lodged in district Jail Baparda on 16/8/1982. The appellant No. 2 Rameshwar would have gone to the court after 16/8/1982 for remand and would have come back to jail from the court but no evidence (was fed by the prosecution to show that the appellant No.1 Rameshwar remained Baparda when he was taken to the court for remand after 16/8/1982 and he remained Baparda when he was brought to jail from court. Thus, the entire link evidence for remaining Baparda of Rameshwar appellant No. 2 has not been produced.

20. According to the statement of Abdul Shakur P.W. 1 he had identified the appellant No. 1 Ram Autar in the light of bulb and in the light of torch and he had seen Ram Autar appellant No. 1 for the first time at the time of commission of dacoity and after that he identified him in district jail Kheri and in between them

he had not seen him. The house of Abdul Shakur P.W. 1 is a big house. It has not been stated by Abdul Shakur P.W. 1 that where in his house the bulb was burning at the time of commission of dacoity and therefore, light of bulb was not available to Abdul Shakur P.W. 1 to identify the appellant No. 1 Ram Autar. Abdul Shakur P.W. 1 has not stated that who had torch and who was flashing the torch at the time of the incident and therefore, the light of torch was also not available to Abdul Shakur P.W. 1 identify the appellant No. 1 Ram Autar and it appears that appellant No. 1 was shown to Abdul Shakur P.W. 1 before his identification and therefore, identification evidence of Abdul Shakur P.W. 1 against Ram Autar appellant No. 1 is liable to be rejected. I accordingly reject it. Abdul Shakur P.W. 1 is not a truthful witness.

21. Abdul Majid P.W. 2 had identified the appellants in the test identification parades and he committed no mistake. According to the statement of Abdul Majid P.W. 2 he had seen the faces of the dacoits in the light of bulb and thus he had identified the appellants in the light of bulb. According to the statement of Abdul Majid P.W. 2 he had seen the appellants for the first time at the time of commission of dacoity and after that he identified them in jail and in between them he had not seen them. Abdul Majid P.W. 2 resides in the house in which Abdul Shakur P.W. 1 resides. Abdul Majid P.W. 2 did not state that where in the house bulb was burning and therefore the light of bulb was not available to him to identify the appellants. was going to lie down and then dacoits entered inside and he reached near the Zeena then dacoits came and for the first time he had seen the dacoits at the roof and he was 1415 persons on the roof and he did not try to run from the house and he entered in a Kothri and he himself concealed with his children. He has further stated in crossexamination that he closed the darwaja of his kothri and daraz was in the said kothri and from the said daraz he had witnessed the incident. The said statement of Abdul Majid P.W. 2 shows that he himself concealed in a kothri at the time of the commission of dacoity and he had closed the door of that kothri and therefore it was not possible for Abdul Majid P.W. 2 to identify the appellants at the time of commission of dacoity from the daraz of the kothri. No light of bulb was available to Abdul Majid P.W. 2 to identify the appellants and it appears that the appellants were shown to Abdul Majid P.W. 2 before identification and therefore, his identification evidence against the appellants is liable to be rejected. I accordingly reject it. Abdul Majid P.W. 2 is not a truthful witness.

22. Mahib Ullah P.W. 3 had correctly identified the appellants in the test identification parades and he committed no mistake. According to the statement of Mahib Ullah P.W. 3 he had seen the faces of the dacoits in the light of the fire of chappar and the dacoits were unknown and he had seen the appellants amongst the dacoits and had identified them and after that he identified them in jail and in between them he had not seen them. Mahib Ullah P.W. 3 has stated in his crossexamination that he was standing towards north of the wall of Sabir and from that place Maraiya was at the distance of 4050 paces and which was burnt. According to the prosecution case, the dacoits opened the western door of the

house of Abdul Shakur and had gone from the grove and in this grove Maraiya was which was said to have been burnt at the time of incident. The said statement of Mahib Ullah P. W, 3 suggests that he had seen the dacoits going from the grove from the said place where he was standing and therefore, he would have seen the backs of the dacoits and therefore it was not possible for Mahib Ullah P.W. 3 to identify the appellants and it is doubtful that the chappar which was in the said grove was actually burnt as the prosecution evidence is contradictory regarding burning of chappar and therefore, no light of fire was available to Mahib Ullah P.W. 3 to identify the appellants and it appears that the appellants were shown to Mahib Ullah P.W. 3 before identification and therefore, the identification evidence of Mahib Ullah P.W. 3 against the appellants is of no value and is liable to be rejected and I accordingly reject it and Mahib Ullah P.W. 3 is not a truthful witness.

23. Abdul Shakur P.W. 1, Abdul Majid P.W. 2 and Mahib Ullah P.W. 3 are not truthful witnesses and therefore, the learned Court below was not justified in placing reliance on the statements of the said witnesses and was not justified in convicting and sentencing the appellants under Section 395, I.P.C. and therefore, this criminal appeal deserves to be allowed and conviction and sentence recorded against the appellants deserves to be set aside and the appellants should be acquitted of the offences with which they were charged.

24. This criminal appeal is allowed. The conviction and sentence recorded by the learned Court below against the appellants Ram Autar and Rameshwar are set aside and the appellants are acquitted of the offence with which they were charged. The appellants are on bail. Their bail bonds are cancelled and sureties are discharged. They need not surrender.