

(1978) 05 AHC CK 0135
In the Allahabad High Court
Case No : Criminal A. No. 412 of 1975

Shaukat

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 11-05-1978

Acts Referred:

Penal Code, 1860 (IPC) — Section 396

Citation : (1980) ACR 84

Hon'ble Judges : Mahavir Singh, J;M.M. Husain, J

Bench : Division Bench

Advocate : S.K. Mehrotra, for the Appellant;

Final Decision : Allowed

Judgement

Mahavir Singh, J.—This is an appeal by Shaukat against his conviction u/s 396 IPC and sentence of imprisonment for life.

2. The prosecution case was that on the night between 26/27th October, 1972 a dacoity took place in the house of Dhakan (PW 1), resident of village Umarpurwa, hamlet of village Semaar, police station Pihani, district Hardoi. The dacoits were armed with guns, spears and lathis. A lantern and a Dhibri were burning inside the house. Dhakan and his uncle (sic) however, managed to escape from the house after some time and raised an alarm. On hearing the same, a number of village people of this village and neighbouring Purwas including Mahrant (PW 6) and Paras Ram (PW 7) came there. One of them set fire to a heap of dried sugarcane leaves lying to the north-east of the house in question. That created enough light. The dacoits had also torches. The dacoity was committed for about half an hour. The dacoits left the house of the victim with their booty but they were chased by the village people. During the course of the chase the inhabitants of the neighbouring village on the way also joined in the chase. During the chase one of the chasers Nathu gave a lathi blow to one of the dacoits who then fired at him with his gun and Nathu died on the spot. Near the grove of one Ambar in village Barahiyakhara about three miles from the

house of Dhakan, there was an encounter between the village people and the dacoits. Two of the dacoits were caught and the rest ran away. One of the dacoits also died on the spot. The other dacoit Munshi, however, was alive for some time. Before his death the names of their companions were also ascertained. The village people also were said to have recognised Rashid, Babu and Rauf from amongst the other dacoits. Dhakan then went to the police station Pihani and lodged a report at 5.10 P. M. on 27-10-72 giving the names of the recognised dacoits and also those whose names were given by one of the captured dacoits Munsif, including the Appellant Shaukat.

3. The police had submitted its charge sheet against the three persons who were said to be recognised by the village people. They were Babu, Rashid and Rauf. Besides that identification parades were held and the Appellant and Afsar were also identified by sufficient number of witnesses. Thus five persons were charged u/s 396, IPC.

4. The Appellant and the other co-accused had denied the charge and alleged their implication because of enmity. The Appellant and his companion Afsar alleged that they were known to the witnesses from before.

5. The learned II Adl. Sessions Judge Hardoi held that the participation of the three persons, who were said to have been recognised by the village people was not proved beyond reasonable doubt because there was enmity between them and the witnesses and only those witnesses who had some animus against them were examined. So he acquitted them.

6. As regards Afsar, it was found that he was a relation of one of the known accused Babu and Rashid. There was also only one good identification against him. Hence he too was acquitted.

7. However, as against Shaukat Appellant there was said to be two good identifications against him. The theory that he was known from before was not accepted. Accordingly he was convicted and sentenced him as aforesaid.

8. In appeal it has again been contended that when the prosecution evidence with regard to the other four co-accused was not accepted, it was not safe to place reliance upon their evidence even as regards this Appellant. Reliance was placed for this upon *State of U. P. v. Jagney* 1971 AWR 163.

9. The facts of this ruling are similar to the facts of the present case. In that case also the victim had named certain persons alleged to have been recognised among the dacoits. It was found that the evidence against the accused was not reliable. So the High Court observed that when the credit of these witnesses was shaken, there was no guarantee that they would tell the truth and not conceal the facts of their knowing that accused as well. In the present case also there is a similar situation. The village people including the victim had alleged to have recognised three persons out of ten or eleven dacoits who took part in the dacoity but the learned Sessions Judge found that the evidence of these

witnesses was wholly unreliable for that. There was animus of these witnesses with these persons. There was no independent witness examined by the prosecution although a large number of persons had come on the scene at the time of the dacoity and even during the course of chase. Against the Appellant the evidence is only of identification of two persons. He also alleges that (as in the ruling cited above) he was known to the witnesses as he used to sell vegetables in the nearby market for a long time where they used to visit. So it cannot be said that these witnesses might not have concealed the facts of their knowing this accused also.

10. The learned Government Advocate contends that the observation in the above case is not acceptable for all cases and that no precedent should be accepted on facts. That is true that a view about certain facts of a case is not necessarily to be taken in similar facts in the other case but in that case the general principle about appreciation of evidence was taken, it was that when the credit of certain witnesses, who named certain persons, had been shaken, it became difficult to place reliance upon their testimony with regard to the other culprits also.

11. The learned Government Advocate, however, contends that the principle *falsus in uno falsus in omnibus* is not applicable in India and even if witnesses were not held reliable with regard to certain accused, it is not necessary that the evidence should not be accepted against the remaining accused also. So merely on that ground the evidence of the witness against the Appellant should not be rejected. That may be accepted but all the same it is not proper to place reliance upon their bald statement without proper scrutiny.

12. In this case there is no corroboration of the evidence of these witnesses. Secondly one of the witnesses Makrand (PW-6) has stated that amongst the dacoits eight or nine persons were taking looted property consisting of boxes and bundles and only two dacoits who were behind them had kept guard and they had guns with them. The learned Counsel for the Appellant points out that there was no question of the dacoits taking any box or gathris. In the list of property looted, and attached with the FIR, no case of box having been taken has been mentioned. Instead certain ornaments, one Saree, one Dhoti and one Shirt were alone said to have been looted. Thus it appears clear that this witness was deposing from his imagination. He was not injured. So his presence was not ensured, Thus, if his identification is excluded, there remains only one identification against Shaukat Appellant and that would be insufficient to warrant his conviction.

13. In the result the appeal is allowed. The conviction and the sentence of the Appellant are set aside. He is in jail. He shall be set at liberty forthwith unless wanted in connection with some other case.