
(2007) 05 AHC CK 0263
In the Allahabad High Court

Shiv Mangal and Others (In Jail)

APPELLANT

Vs

The State of U.P.

RESPONDENT

Date of Decision : 08-05-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 395, 397

Citation : (2007) 05 AHC CK 0263

Hon'ble Judges : Shiv Shanker, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Shiv Shanker, J.—This criminal appeal has been filed against the impugned judgment and order dated 14.9.82 passed by VIIth Additional Sessions Judge, Mainpuri in Sessions Trial No. 497 of 1981 (connected with S.T. No. 506 of 1981 State v. Shiv Mangal and Ors. convicting the appellants u/s 395 and 397 I.P.C. and sentencing them 5 years R.I. For offence u/s 395 I.P.C. Accused Shiv mangal is sentenced to undergo 7 years R.I. For offence u/s 395 read with Section 397 I.P.C. The sentences were ordered to run concurrently.

2. Brief facts arising out of this appeal are that on 10.8.81 at about 5 P.M. Sri Hukum Pal Singh, his brother Sri Lal Singh and village fellows Sri Raj Bahadur Singh, Tukman Singh and his relations Sri Rakshpal Singh and Raj Kumar Singh of village Simrey were returning from the cattle fair of Anna Saraya together along with the bullock which was not sold. When they reached near Garahi ahead village Baroli and were passing from the way surrounded by the grove then the accused persons Shiv Mangal, Chhotey, Asraf Lodhey, Lekhraj, Udal Lori, Ashok @ Kallu, Brahman, Kali Charan Jatav residents of Baroli, Zelaydar Lodhey of Nagla Girdhari, Jigdish of Jiwan pur, Kripal, Phool Singh, residents of Turhari, Ranjeet Lodhi residents of Nizam pur, Chakkan Lodha resident of Santosh pur armed with rifle and lathies came out the grove and surrounded them and asked to deliver the money and property. Lal Singh resisted then accused Shiv

mangal fired causing him injury in the stomach. The accused persons looted Rs. 4000/- cash from Lal Singh, Rs. 1200/- from possession of Raj Bahadur Singh. They were made to sit in the grove by the dacoits. After some time Jagdish, Sarnam Singh, Harnam Singh, Dayaram and Kewal Singh residents of Husen pur came there then they were also looted the cash of Rs. 1100/- from Jagdish, Rs. 600/- from Sarnam Singh, Rs. 1850/- from Harnam Singh, Rs. 2600/- from Dayaram and Rs. 3000/- from Kewal Singh. They were also made to sit in the grove. Thereafter Ganga Singh resident of Jasrath pur passed from that way then he was also looted of his cash of Rs. 1200/-. The dacoits did wait from some time more and when no body passed from that way, the accused persons went away towards garadi. These accused persons were known to the victims as they were residents of the neighbouring villages.

3. The injured Lal Singh was brought to village Rakri from where he was taken to Alipur Kehra after arranging the bullock cart. The complainant Rukum Singh got scribed a written report from Sri Raghunandan Singh at Alipur Khera and signed the same. He lodged that written report at P.S. Bhongaon the same day at 22.30 hours having taken the injured Lal Singh on tractor. The injuries of Lal Singh were medically examined at District Hospital Mainpuri on the same night on 11.8.81 at 1.45 A.M. All the accused persons were named in the F.I.R. The police after investigation sent up ten accused persons for trial for offences u/s 395/397 I.P.C. by filing charge sheet dated 30.8.81 and the three accused persons by police report dated 24.9.81.

4. After commitment of the case, charges were framed against all the 13 accused persons u/s 395/397 I.P.C. who pleaded not guilty and claimed to be tried. They have denied the entire prosecution case in their statements u/s 313 Cr.P.C. The present appellants have stated that they have been falsely implicated in this case. No oral or documentary evidence was given by any of the accused in the defence.

5. The prosecution examined P.W.1 Rukum Pal Singh, the complainant, P.W.2 Sri Lal Singh, the injured, P.W.-3 Sri Harnam Singh and P.W.4 Sri Tukman Singh, P.W.-5 S.I. Ram Ji Lal Sharma and Investigating Officer in support of its case.

6. After hearing the submissions made on behalf of learned Counsels for both the parties, the accused persons namely Udal, Kali Charan, Jagdish, Kripal, Ranjeet, Lekhraj and Ashok @ kallu were acquitted of the charges of offences under Sections 395 and 397 I.P.C.

7. Other accused persons namely Shivmangal, Chhotey, Ashraf, Zileydar, Phool Singh and Chakkan(present appellant) were convicted for the charges levelled against them and awarded sentences to them as above. Thereafter, this criminal appeal has been preferred by all the six convicted accused persons.

8. After filing the present appeal, the appellants namely Shiv Mangal, Chhotey, Asraf and Zileydar had died. Therefore, their appeal was abated. Now two appellants are alive who are Phool Singh and Chhakkan.

9. Heard learned Counsel for the appellants and learned A.G.A. as well as perused the whole record.

10. Learned Counsel for the appellants contended that all the prosecution witnesses who were examined in the trial court, did not know the appellants prior to this occurrence. Therefore, their names were introduced in the F.I.R. on the basis of information of others. It is further contended that they have surrendered in the case before the concerned court below. Thereafter the application was moved for holding test identification parade for the purpose of identity of the appellants and it was allowed by the concerned Magistrate, but the charge sheet was filed by showing the date one day before in the court. Therefore, the Investigating Officer had not complied with the order of the concerned court for holding test identification parade on the ground that all the accused-appellants were named in the F.I.R. It is further contended that P.Ws 1,2,3 & 4 have stated that they did not know the appellants prior to the alleged occurrence. Therefore, the identity of both the appellants had become suspicious at the time of incident. However, they have been convicted by the trial court while there was no believable evidence available on record. In such circumstances, this appeal is liable to be allowed.

11. On the other hand, learned A.G.A. has urged that there are four eye-witnesses who disclosed the names of both the appellants also in their deposition and they are the residents of neighbouring village of the witnesses and they were known by them prior to the incident. Therefore, they were named in the F.I.R. In such circumstances, the appellants have also been convicted on the basis of reliable evidence of P.W.-1 to P.W.-4 who are the eye-witnesses. In such circumstances, the appeal is liable to be dismissed.

12. There is no dispute that both the above appellants Phool Singh and Chhakkan were not arrested on the spot at the time of incident. Factum of dacoity has not been challenged on behalf of appellants.

13 P.W.-11 Hukum Pal Singh, P.W.-2 Lal Singh, P.W.-3 Harna m Singh and P.W.-4 Tukman Singh have been examined by the trial court. All the (our eye-witnesses have deposed that both the appellants were also accompanied with the other persons who were also named in the F.I.R. in committing the offence of dacoity at the time of incident.

14. P.W.-1 has identified the appellant Phool Singh in the court and Chhakkan appellant was not identified in the court during the trial. He has further admitted in cross-examination that his father Udai Singh, Raghunandan, Raj Bahadur, Tukman(P.W.IV) were present at the time of dictating the report who narrated the names of all miscreants then they were named in the F.I.R. by him. Therefore, it appears that both the above appellants were not known prior to this incident by him. They were not arrested on the spot. They moved an application for their identification during investigation which was allowed by concerned magistrate even then it was not complied on the ground that they are named ins

the F.I.R. and submitted charge sheet one day before the order of magistrate.

15. P.W.-3 has not taken the name of Phool Singh appellant in his examination in Chief. Name of Chhakkan appellant had been taken. Further he has stated in his cross-examination that whose names have been told by him as they were taking their at the time of incident and he also heard the name of the above persons prior to this incident. All this shows that both appellants were not known prior to this incident by him.

16. P.W.-2 Lal Singh has not taken the name of Phool Singh appellant in his examination of Chief but taken the name of Chhakkan appellant. He has admitted in his cross-examination that whose names have been taken, were known prior to this incident as they used to come in the market and they took their names each other in the market, so they were known prior to this incident. Prosecution has not tried to get identified the appellant Chhakkan in the court at the time of his examination of Chief.

17. P.W.-4 has identified the both appellants in the court but he has admitted in his cross examination that he cannot tell the parents' names of accused. Accused used to come in the market and took their names with each other. So he knew the accused. Their names were not told by any one to him. He did not talk to them and he did not sit with them anywhere, No any transaction had been made with the miscreants.

18. Therefore, testimony of above four witnesses reveals that both the appellants also were not known prior to this incident by them. They were named in the F.I.R. at the instance of other persons who have not been examined in the witness box. The Investigating Officer also did not get identified the the appellants from the witnesses in compliance of order of magistrate also. Mere identifying the appellants in the court by them in the trial, their identity at the time of incident could not be established. Seven other accused persons who were also named in the F.I.R. have already been acquitted by the trial court in the same judgment.

19. There is also no allegation against the appellants that looted property were recovered from their possession. In such circumstances, the identity of the appellants at the time of incident is liable to be suspicious. However, trial court has committed manifest error of law and fact in convicting the appellants.

20. In the result, the appeal is allowed and conviction made against them under the charges levelled against them is set aside and they are acquitted from the said charges.

21. They are on bail. Their bail bonds are cancelled and their sureties are hereby discharged from from their liability. There is no need to surrender in the case.